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MEDICAL

JURISPRUDENCE.

BY

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"Hæc est illa amica Imperantium atque Medentium conspiratio, qua effectum est, ut aliquo veluti connubio Medicina ac Jurisprudentia inter se jungerentur." *Hebenstreit Anthropolog: Forens:*

IN THREE VOLUMES.

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A COMMENTARY

UPON THE

PRECEDING OBJECTS OF INQUIRY:

With a view to appreciate and explain the relative importance of each, in enabling the Medical Inquirer and Jurist, to arrive at just conclusions, in cases of complicated doubt and difficulty.

CASE I.

THE PATIENT IS LIVING, AND MEDICAL ASSISTANCE IS REQUIRED.

This is the least complicated case that can occur; the medical inquirer has not only the advantage of the patient's testimony, but that also of his own observations upon the symptoms and circumstances of the case. We have already stated that the declaration of a person, made under an apprehended pending dissolution, is by the law of this realm considered tantamount to an oath, (*see vol. i. p.* 165), and we have also stated what it becomes our duty to repeat in this place, that in recording such testimony, we must be prepared to combat various errors and prejudices: we do not mean to deny that the awful situation in which the patient is placed will not, in general, secure us against any wilful misrepresenta-

tion, but we contend, that a person acting under the influence of bodily suffering is very apt to fall into numerous fallacies respecting the transactions in which he may have been previously engaged; especially in such cases as usually constitute the objects of medico-judicial inquiry, where the passions not unfrequently increase the natural disturbance of the mind, while the eagerness which is so justly felt for the detection of the author of the injury, will tend rather to heighten than to correct any hallucinations under which the sufferer may happen to labour; for on such occasions the imagination is always ready to supply the want of testimony, and to fill up the spaces which actual observation may have left vacant.

Patients have not unfrequently laboured under the impression of their having taken poison, when there can never have existed the least ground for such a suspicion, and yet their general conduct has been in complete opposition to the idea of insanity: (*a*) a curious case of this kind is related in the *Sepulchretum* of Bonetus; and even during the progress of the present work, the author was consulted upon an illness, which the patient seriously attributed to the operation of a slow poison, declaring that it had been secretly administered during a philanthropic visit to one of our public prisons. *Dr. Esquirol* (*b*) also relates the case of a lady, twenty-seven years of age, who in the last stage of phthisis pulmonalis perceived in her room the odour of burning charcoal, and immediately conceived that there was a design against her life; in consequence of which she left her lodging, and sought another abode, but the fumes

(*a*) In cases of attempted suicide we shall neither be surprised nor deceived by any extravagant statements.

(*b*) Dict. des Sciences Med. Art. Folie.

incessantly pursued her, and she died fully convinced that she was the victim of some malicious persecution.

But of all the fallacies with which we have to contend, no one is more dangerous in its effects, or more frequent in its occurrence, than that which leads them to mistake the identity of the offender; we have already alluded to this fallacy (*vol.* i. *p.* 440), and we shall hereafter have occasion to refer to it.

When a medical practitioner is summoned to investigate a case, in which severe sufferings have supervened, without any apparent or assignable cause, the following interrogatories are calculated to elicit data for a just conclusion.

Previous state of the patient, with respect to bodily health and strength?—The knowledge of these facts will materially assist us, not only in explaining the violence of the present symptoms, but in estimating their indications, in forming some opinion with regard to their causes, and in prognosticating their results.

The age and occupation are also to be ascertained. Violent tormina of the bowels, and other symptoms resembling those of acute poisoning, are frequently explained at once, by learning that the individual in question has been engaged in some trade or manufactory, from which he has been necessarily exposed to metallic exhalations; thus painters, gilders, smelters, and others, from living almost constantly in an atmosphere charged with such fumes, are always liable to sudden and violent attacks, dreadful cholics, paralysis, and premature death. *See our chapter on the poison of Lead, vol. 2, p. 336, and that on Aerial Poisons, page 457.*

Present symptoms of the patient.—Having gained the necessary information with respect to the previous

history of our patient, we are prepared to investigate the symptoms under which he at present labours, and to inquire into the circumstances of their accession, progress, order of succession, intensity, and duration. If this investigation be conducted with skill, we shall be enabled to form some opinion respecting the origin of the sufferings, and, perhaps, to distinguish the invasion of a spontaneous disease from the effects of acute poisoning: upon this latter point, however, we shall require the aid of much collateral information, (*a*) as *whether the patient has ever suffered in a similar manner at any previous period, or whether any part of his family or friends have experienced a similar attack at the present time?* If the reply to this latter query be in the affirmative, we may look for a common cause of the complaint, and be led to suspect that it may arise from the ingestion of some acrid matter. We should therefore proceed to discover *the nature of the meals last taken as to quantity and quality;* the practitioner should, at the same time, pay particular attention to the state of the different persons affected, and to the existence or absence of vomitings and stools. The following case, reported by *Morgagni*, and quoted by *Orfila* & *Foderé*, may be introduced as affording good illustrations of those points of inquiry, whose importance we are anxious to enforce. "In the month of May, 1711, four persons, that is to say, a priest, two women, one of which was his sister-in-law, and another person, all in good health, and on a journey, stopped at an inn to dine. Setting out on their road after dinner, the priest in a short time felt himself so ill in his

(*a*) See vol. 2. page 155 of the present work, where this subject is very fully considered.

bowels, that he was obliged to dismount from his horse. Notwithstanding the copious evacuations, both upwards and downwards, the pain increased every moment, and it was necessary to take the patient back to Céserne, the place where they had dined, and where the priest arrived half dead. A medical man who was called in, thinking he had only to deal with an ordinary cholic, employed a number of fomentations, glysters, purgative draughts, and anodynes; although he saw that one of the women had also strong evacuations with pains and faintings, and that the other person complained of pains and of a weight at the stomach, he never suspected the presence of a poison, because the other woman had no complaint, and the landlord protested with many imprecations, that there was nothing dangerous in his dishes; however, the evacuations saved the patients, and as they diminished a little next morning, it allowed of their removing into the neighbourhood of *Morgagni's* residence, whom they immediately called in. This great physician having ascertained whether there was any dish at the table of which the woman who was in good health had not eaten, and having found that it was a great dish of rice which had been first served up, concluded from this circumstance that it was this dish that contained the poison. The difficulty however, was, that the priest who had eaten the least, and who had been on the whole extremely abstemious, was precisely the person who had suffered the most, and the soonest; that the woman, who had eaten more than the priest, had been less sick than he; and that the other person, who had eaten more than all the rest, was the one who was the least incommoded."

Was there no cheese rasped over this rice? de-

manded *Morgagni*. They answered in the affirmative; the priest who had little or no appetite, ate scarcely any thing but the cheese. In that case, said *Morgagni*, you understand already that there was arsenic among that cheese, which had probably been prepared for killing rats, and not having been laid away with sufficient care, some one had taken it to serve up with your rice during the time that you were hurrying the landlord to send up your dinner. These conjectures were verified by the confession of the landlord himself, who, having learned that the patients were out of danger, was no longer afraid to acknowledge that such had been the cause of this unfortunate accident."

The practitioner, says *Orfila*, will not be able to form a correct judgment in cases of this kind, if he neglect to pay attention, *first*, to the state of the stomach of the different persons poisoned; in fact, those who have taken a great quantity of food or drink, would feel in general less severe symptoms than others; *second*, to the nature of the dishes and of the drinks, as well as to the quantity that each person may have eaten or drank; *third*, to the existence or absence of vomitings and stools. It is evident that it may happen, that some persons have eaten a tolerably large quantity of a poisoned dish without any serious symptoms taking place, for this very reason, that the quantity of the food was considerable, and that it easily produced copious evacuations, by means of which the poison had been expelled. Numerous cases of culinary poisoning might be adduced in this place, in illustration of the important lights which are to be derived from the investigations which form the subject of the present chapter; but we have already considered the subject very fully

Dr A. T. Bee
1882

under the head of poisons; and in the history of the effects of copper and lead, we have particularly explained the evils that may arise from the careless use of such metallic utensils in cookery.

Whether any and what remedies have been used; by whom recommended; and by whom administered?—The importance of this part of the enquiry is too obvious to require explanation; we are to learn from it whether the administration of the medicines might not have accidentally contributed to the aggravation of the symptoms they were designed to allay; suppose, for instance, we were to be told that the patient had resorted to copious libations of brandy to mitigate the sufferings of the bowels, which were afterwards found to depend upon *Enteritis;* the inference is obvious—but in performing this part of our professional duty, the greatest caution is necessary, and we must take care that our own medical opinions do not carry us to an unjustifiable extent in our reprehension of the plan of treatment which has been pursued by others; a striking instance of this want of propriety occurred in the late celebrated trial of *Donnell*, and was very properly denounced by the court, *(see page* 161 *in the second volume, and Appendix, p.* 304.*)* But there still remains another reason why we should cautiously and attentively examine any medicine that may have been administered, and it would be right in the practitioner to procure a portion of such medicine, with a view to its future analysis; for it has happened that where the assassin has supposed that his first dose would be insufficient to effect his purpose, he has artfully insinuated an additional dose in the medicines which are administered for the relief of his victim, and thus the hand, which is treacherously held out with pro-

mises of succour, adds a stronger poison to the cup; this occurred in the diabolical case of *Mary Bateman*, (*a*) better known by the name of the Yorkshire witch, who having poisoned a family with arsenic, sent a jar of honey, mixed with corrosive sublimate, *for their relief.*

A knowledge of the nature of the medicines that may have been taken, will also assist the chemist in his examination of the matter vomited, as we have fully explained under the history of Poisons.

Appearance of the evacuations.—This should always be attended to, for although it can hardly afford, in itself, a satisfactory indication, yet we have shewn, in the course of our history of poisons, that it may concur with the facts to heighten the probability of a case. The chemist will also require them for examination.

CASE II.

THE PATIENT IS DEAD.—THE ATTENDANTS CAN FURNISH ONLY AN IMPERFECT ACCOUNT OF HIS DISSOLUTION.

In conformity with the plan upon which we have arranged the objects of inquiry into the causes of sudden sickness and death—that of beginning with the most simple and plain, and passing in regular gradation to the more complicated and obscure problems, the present case, in which the patient is dead, but the attendants are able to furnish some history, however imperfect, very naturally constitutes the connecting link between that in which the

(*a*) See note at page 269 of vol. 2.

patient is living, and that in which the great avenues of information are entirely closed upon us by the death of the individual, and the total absence of all direct testimony. The plan, therefore, upon which the investigation of this case is to be conducted, is in a great measure to be derived from the application of those precepts which are contained in the other cases; that relating to the examination of the attendants being collected from the first, and all that concerns the death, from the third.

There is, however, one object of inquiry which may be mentioned in this place with peculiar propriety, as the obscure and often erroneous evidence which is given in cases of sudden death, during an affray, renders it highly important to learn, *whether the deceased had died during a paroxysm of passion.* We have little doubt but that many persons have been convicted of murder, where the death of the individual in question, was the sole effect of the high state of irritation in which he had been placed. That life may be suddenly extinguished by the violent impulse of passion we have already shewn under the consideration of Syncope (p. 26), and we are farther prepared to assert that Apoplexy (*a*), and other fatal diseases may also, in certain states of predisposition, result from the same powerful cause;

(*a*) *Aretæus* asserts that immoderate perturbation of mind, consternation, fear, despondency, sudden and violent joy, immoderate laughter, &c. have produced apoplexy, (*De Signis et Caus: Diut: Morb: Lib.* 1, *c.* 7.) *Forestus* (p. 509) relates the case of a gentleman of plethoric habit, and hereditarily disposed to the disease, who, on receiving information of the sudden death of an intimate friend, was instantly seized with a tremor of the left foot, and soon afterwards with apoplexy. We beg to refer the reader to *Dr. Cooke's* valuable and learned work on Nervous Disorders, vol. 1, p. 217, where the author has collected with much industry a variety of cases in illustration of this subject.

violent transports of the mind may likewise occasion the return of any particular disease to which the patient had been formerly subject, as epilepsy, and other spasmodic diseases; they may likewise bring a chronic disease at once to a fatal crisis, as we have seen in the case related at page 29 of the 2d volume; the fact has been also well illustrated by *Dr. Gordon Smith*, in the case which occurred to a surgeon of his acquaintance in one of the midland counties, of which the following is an outline. "In the course of an altercation between a man and his wife, the woman died, and a clamour was raised that the husband had murdered her: an inquest being held, a verdict was returned against him, and he stood his trial at the following assizes; he was, however, acquitted, for it appeared in evidence that he had not even touched his wife during the quarrel. The deceased was a person of an extremely violent temper, and on opening her body, it was found that she had been labouring under suppuration of the liver, and that an abscess had burst into the cavity of the abdomen, in consequence of the agitation into which she had been thrown." *Baron Larey* describes the case of a person who had been violently wounded in the thorax by a sword in a duel; but the man was progressively recovering, when in the fourth month from the period of the injury, he died suddenly in consequence of a violent fit of anger; upon dissection, the heart and pericardium exhibited traces of inflammation. We should also learn, if possible, *whether the deceased had been at the time of death in a state of intoxication*: for in such a condition a comparatively slight injury may occasion death. The following case, related by *Dr. Cheyne*, in which *Mr. Charles Bell* was concerned, we quote from *Mr. Shaw's* excellent *Manual*

of Anatomy (*a*), (p. 165.) "An industrious man returning home from his work, found his house empty; the bed he was to lie upon, and the tools of his trade, sold for liquor by his wife, whom he found in a gin shop, where she had been drinking and dancing. He brought her home, and in the passage of his house struck her, and ordered her to go up stairs; she refused to go; he carried her upon his shoulders, and the contention continuing up stairs, he struck her again. There having been no one present, we have only the husband's account of her death. He said that whilst sitting on her chair, she fell down, upon which he threw her on the bed, conceiving that she was in a fit, such as he had seen her in formerly. Some of her neighbours coming in, found her dead. *Mr. C. Bell* was requested to examine the body of this woman. The man was afterwards tried at the Old Bailey, for murder, when *Mr. Bell* deposed, that upon taking out the brain, and tracing the vessels in the base, the anterior artery of the cerebrum going off from the internal carotid of the left side, was found torn half way across. The cause of this woman's death was the bursting of the blood from the ruptured vessel; as to the cause of the rupture, *Mr. Bell's* opinion coincided with the best authorities in pathology, that there is a state of the vessels, in which an external injury or shock is more apt to produce rupture; and drunkenness may be supposed to be the artificial state of excitement

(*a*) A Manual for the Student of Anatomy, containing rules for displaying the structure of the body, so as to exhibit the elementary views of anatomy, and their application to pathology and surgery, by *J. Shaw*; being an outline of the demonstrations delivered by him to the school of Great Windmill-street. 8vo. p. 342. London, 1821. We have been much pleased with this useful little work.

which most resembles this state of the vessels. Being asked whether the blows were the cause of the rupture, he said he conceived it very likely that a shock would rupture the vessel; and being then asked whether he conceived that this woman was more likely to have a vessel ruptured, from having being intoxicated—he was of opinion that intoxication, and the struggle, were likely to produce such a degree of activity of the circulation in the head, that a less violent blow might produce rupture, than what, in other circumstances, would have proved fatal." The prisoner was acquitted.—At the York assizes in the year 1820, a somewhat analogous question arose,—whether the deceased might not have been attacked with apoplexy during the struggle? The light of anatomical dissection will be required in such a case, and the remarks which Mr. *Shaw* has offered upon the subject, appear to us to be extremely judicious and valuable; if, says he, effusion of blood be found between the dura mater and scull, and if a bruise on the scalp corresponds to the part, we may conclude that it has been caused by the blow; but if blood is found between the dura mater and the brain, though we should discover the marks of blows, or even fracture of the scull, still the question may be entertained whether the patient might not have been attacked with apoplexy during the struggle.

How soon is the deceased supposed to have died, after the alleged cause of his dissolution.—This is a very important question, for by learning the length of the interval between the attack and the death, we shall at once be enabled to accept as probable, or reject as impossible, the accounts given by the friends and neighbours. Thus, poisons, in general, require

some time for their operation. Apoplexy does not generally destroy life under several hours (*a*).

CASE III.

THE PERSON IS FOUND DEAD, AND THE HISTORY OF HIS DISSOLUTION IS UNKNOWN.

The deep obscurity in which this case is necessarily involved, can alone be dissipated by the concentrated light of circumstantial evidence, derived from the inspection of the dead body, in the exact situation and posture in which it was found, and that of the surrounding objects; from the information afforded by competent witnesses, respecting the previous history of the individual in question; and, lastly, from anatomical dissection.

In conducting such an inquiry the most trifling incidents connected with the deceased should not pass unheeded, for however unimportant they may at first, individually, appear, we shall often find that in combination they will afford the principal data for the solution of our problem. With how many examples will the history of crime present us where the more minute circumstances have alone furnished the "damning proofs" of guilt? Their apparent insignificance in such cases would seem to exempt them even from

(*a*) *Cooke* on Nervous Disease, vol. 1, p. 176. In some few instances, however, death takes place immediately in this disease. *Dr. Kirkland* speaking of apoplexy, in which there is an instantaneous extinction of the vital prineiple, relates the case of a mantua-maker, who being at work, was talking cheerfully with some of her friends about her, when her hands dropped down upon her lap, and she was perfectly dead. *Forestus* relates several similar cases, but hesitates in pronouncing them apoplexy. We have no doubt but that the greater proportion of sudden deaths depend upon diseases of the heart.

the usual precautions of concealment, and more especially from those artful measures by which the designing assassin seeks to cast an impenetrable veil over the more direct evidences of his crime.

1. *Circumstances to be learnt by the Inspection of the Body.*

That the inspection of the body could furnish the satisfactory means of discovering the cause of its death, is an opinion which has been very naturally entertained from the earliest ages; although it is easy to perceive that the extent and just value of the indications, which such a practice is capable of affording, could never have been appreciated until the more advanced periods of physiological knowledge.

As the ancients exposed their sick on the high roads, for the advantage of receiving from the casual passenger his opinion and experience respecting the particular malady under which they laboured, so did they expose the bodies of persons, supposed to have been murdered, in order that each spectator might candidly observe their appearance, and freely inquire into the circumstances which attended their decease; thus, as we are informed by *Pliny*, was the body of *Genucius*, a tribune of the Roman people, on his being found dead in bed, brought forth to the assembled multitude, who, unable to discover any external marks of violence, pronounced his death to have been a visitation of the gods; and we learn from *Tacitus*, that the remains of *Germanicus*, who was poisoned by *Piso*, were exposed in the market place of Antioch; thus too, in conformity with ancient custom, was the bleeding corpse of *Julius Cæsar* exposed to public gaze and animadversion.

The decisions, however, which such a custom was intended to facilitate, were generally perverted by the delusions of credulity and superstition. Among the more prominent instances of the latter source of fallacy, we may notice a belief that has extended even into later days—that upon the presence of the murderer the wounds of his victim will bleed afresh!

> "O gentlemen, see, see! dead Henry's wounds
> Open their congeal'd mouths, and bleed afresh!
> Blush, blush, thou lump of foul deformity;
> For 'tis thy presence that exhales this blood
> From cold and empty veins, where no blood dwells;
> Thy deed, inhuman and unnatural,
> Provokes this deluge most unnatural."—
>
> *Richard* III. *act* 1. *s.* 2.

Situation and attitude of the body.—It cannot be too generally known that, upon the discovery of a dead body, its situation and attitude should never be disturbed until it has been examined by competent persons. The information which the medical inquirer may obtain from his observations upon the position of the dead body, is often important and decisive; it may even, in some cases, furnish data for determining whether the death was occasioned by accident, suicide, or murder. We may, for example, find the deceased in a posture which he could never have himself assumed, whence we should be led to conclude that he had not fallen by his own hands. In the case of the disputed suicide of the *Earl of Essex* (*a*) in the

(*a*) See the trial of *Lawrence Braddon* and *Hugh Speke*, for a misdemeanour, in suborning witnesses to prove the Earl of Essex was murdered by his keepers. Feb. 7, 1683. *Sta. Tri.* vol. iii.

tower, much information was lost by the body having been stripped and removed before a due examination took place; the hasty manner in which this was performed, excited on that, as it necessarily must on all similar occasions, very considerable suspicion respecting the motives which could prompt so premature and unnecessary an interference. An attention to the posture of the body is also important in cases of wounds, which should always be examined with reference to this circumstance. It has also been very justly observed, that a person in a fit, or in a state of intoxication, might fall accidentally into such a posture, as to be actually suffocated by the pressure of his own hand, or that of any resisting body upon his throat. If such a case were to occur, all evidence of the fact would be destroyed by any officious interference that might change the exact posture in which the body was found.

General appearance of the countenance, as to colour, vascular turgescence, or congestion, and morbid physiognomy.—The observation of the countenance of a deceased person will very frequently furnish the medical inquirer with a useful hint in the investigation; we have, for instance, already spoken of the expressive physiognomy of a strangled person, *(page* 45) and in the course of our work, the reader will find ample illustrations of the general importance of the subject.

Whether any discharge issues from the mouth, nostrils, ears, or any other orifice.—The appearance of froth about the mouth indicates that the death of the person has not been instantaneous, but sudden, either from apoplexy, epilepsy, or any other violent cause, *see Appendix, p. 273.* In drowned persons the mouth and nostrils are covered with foam. In epileptic pa-

roxysms there is sometimes an involuntary discharge of fæces, urine, and semen; the evacuation of the fæces very generally occurs in cases of strangulation, and sometimes in those of apoplexy. The appearance of blood flowing from the ears would indicate a violent death from some external cause.

Apparent age of the deceased.—It is important to notice this circumstance, as it will not only assist us in identifying the individual, but, at the same time, point out the diseases of which he was most susceptible, and those of which he was less liable. In relation to such an object the question of age was keenly debated on the trial of *Donellan*, for an account of which we must refer the reader to the evidence printed in the *Appendix*. Apoplexy rarely occurs except in the middle or decline of life. *Hippocrates* says chiefly between the 40th and 50th year. *Aphor. Sect.* vi, 57.

Description of his person, as to bulk, stature, obesity, muscular powers, &c.—Many are the reasons which render a full and accurate investigation of these points an extremely important part of the inquiry. To say nothing of their use in identifying the individual, they will point out the diseases to which such a habit of body would render him liable; and we shall be enabled to deduce a general inference as to the probable state of his health. If suspicions should exist against any individual, we shall be thus prepared to arrive at some probable conclusion with regard to the degree of resistance which the deceased might be able to offer; by comparing which with the powers of the supposed assailant, some valuable circumstantial evidence may be elicited.

Conformation of the neck as to shortness, thickness, &c.—The apoplectic conformation may be said to be indicated by a large head, red face, short and thick

neck, broad shoulders, capacious thorax, prominent abdomen, low stature, robust limbs, and considerable corpulence; this last indication, however, is liable to many exceptions, for dry and spare constitutions, if any confidence is to be placed in the comparative tables of *Rochoux*, are more frequently even attacked with apoplexy, than the plethoric. Under this subject we may notice that the habitual use of tight ligatures disposes to the disease. *Portal* speaks of an ambassador who was attacked with apoplexy, after having long employed general compression, for the reduction of excessive corpulence. *Dr. Donald Monro* states that he has known soldiers carried off by apoplexy, in consequence of stricture on the veins of the neck, from their having been obliged to wear their cravats too tight. *Winslow* has made a similar observation in the Memoirs of the Academy of Sciences for the year 1741.

Probable period that has elapsed since the extinction of life.—Before the process of putrefaction has commenced, we can only adduce an opinion upon this subject from the circumstance of the coldness, rigidity, and general complexion of the body. Under ordinary circumstances, the body looses its vital heat in a very short space of time, and cadaverous (*a*) stiffness takes place and continues until relaxed by the progress of putrefaction; but there are many circumstances that appear capable of controlling and modifying this general result; the heat of the body is not only abstracted with very different degrees of celerity in different situations, but even in the same situation, in death from different causes. *Portal* and other physiologists have observed, that after

(*a*) See our observations upon this phenomenon at page 13 of the present volume.

death from apoplexy, the temperature of the body is frequently maintained, even above the natural standard, to a period beyond that in which it would be totally abstracted from an inanimate mass under other circumstances. (*a*) It has been laid down as a general rule, that the more sudden the death, the longer is cadaverous stiffness from taking place. *M. Orfila* also states, that if the body of a person suffocated, either by a non-respirable gas, or by strangulation, be cold or stiff, we may be certain that more than twelve hours have elapsed since the fatal event, for in death by such causes, the heat of the body is preserved for at least that period; this statement is corroborated by *Richerand*, who says that in asphyxia from carbonic acid, the blood preserves its fluidity, the limbs their flexibility, and the body its natural heat for some hours after death. When the process of putrefaction has established itself, we must deduce our conclusions from the extent of its progress, always taking into consideration the collateral circumstances which may have operated in retarding or accelerating its developement, such as the state of the atmosphere in relation to temperature and humidity, the particular circumstances of the spot in which the body was found, &c.

The determining, as accurately as possible, the length of time the individual has been dead, is not only important in cases of murder; it may be highly

(*a*) *Dr. Badenoch*, in a work on the diseases of India, ascertained by repeated and accurate experiments, that the heat of those who die apoplectic from a "*coup de soleil*," or "*insolation*," as it is termed, continues for a considerable time several degrees higher than the natural standard; in one case, the heart felt to his hand as if it had been five or six degrees higher than in life and health, notwithstanding the body had been dead twenty-four hours.

essential to the ends of justice in questions of survivorship; the following curious case, cited by *Dr. Male*, (*a*) will not only serve to substantiate this assertion, but it will, at the same time, afford a triumphant instance of the application of chemical science in promoting the due administration of the laws. It is well known that when dead animal fibre is exposed, for a certain period, to the action of a current of water, it becomes converted into a fatty substance, resembling spermaceti, and known to chemists under the name of *adipocire*. The period of time required to effect this change has been the subject of dispute. At the Lent assizes held at Warwick, in the year 1805, a cause was tried, in which a gentleman, who was insolvent, left his own house with the intention, as it was presumed from his preceding conduct and conversation, of destroying himself. Five weeks and four days after that period, his body was found floating down a river. The face was disfigured by putrefaction, and the hair separated from the scalp by the slightest pull; but the other parts of the body were firm and white, without any putrefactive appearance. The clothes were unaltered, but the linen was exceedingly rotten. On examining the body, it was found that several parts of it were converted into *adipocire*. A commission of bankruptcy having been taken out against the deceased a few days *after* he had left his home, it became a question of great importance to the interests of his family, to ascertain whether he was living at that period. From the changes which the body had sustained, it was presumed that he had drowned himself the day he left home; and to corroborate

(*a*) Elements of Juridical or Forensic Medicine. Edit. 2, p. 101.

this presumption, the evidence of *Dr.*, now *Sir George, Gibbs*, of Bath, was required, as he had lately been engaged in experiments (*a*) upon this subject. He stated on the trial, that he had procured a small quantity of this fatty substance by immersing the muscular parts of animals in water for a month, but that it required five or six weeks to produce it in any quantity. Upon this evidence the jury were of opinion that the deceased was *not alive* at the time the commission was taken out, and the bankruptcy was accordingly superseded.

Whether any, and what marks, punctures, contusions, echymoses, dislocations, or other injuries, are to be observed about the face, neck, chest, or any other parts of the body; and how far their appearance and character demonstrate the nature of the operation, or instrument by which they were inflicted?—Upon the discovery of a dead body, it becomes one of the first objects to ascertain the nature, extent, and direction of any wounds, or marks of violence, that may be observed. Whether they be merely superficial, or extend beyond the local injury and penetrate the cavities, will be a matter of subsequent investigation by dissection. The examination of deep wounds, in the first instance, is comparatively unimportant, for they are not liable to obliteration by incipient putrefaction; whereas marks and bruises, unless they be carefully inspected before the body undergoes this change, will not be easily distinguished from spontaneous discolouration. This precaution is highly important in those cases in which we suspect the person to have been strangled; when we shall generally discover a circular mark about the neck produced by ex-

(*a*) See experiments by *Dr. Gibbs*, on Adipocire, in the Philosophical Transactions for 1794, part ii, and for 1795.

travasated blood, or, if the act has been committed by the hand, irregular patches corresponding in some places with the fingers and nails of the assailant; traces of violence will be frequently also discoverable on the chest which will answer to the impression of the knees. Upon examining the body of *Sir John Dinely Goodere*, who was murdered on board the *Ruby* ship of war in 1741, the surgeon's mate stated that he found the marks of nails and fingers on his neck; this testimony was satisfactorily fortified by another witness, who declared that on looking into the cabin, he had seen a hand on the neck of the deceased. An accomplice also confessed that after having strangled him with their hands, they drew a rope tight about his neck. (*a*) A very satisfactory instance of the same kind occurred to the author of the present work, during his residence in the county of Cornwall; and he feels no inconsiderable satisfaction in reflecting upon the train of circumstances, through which he was enabled, by his evidence at the assizes of the county for 1814, to secure the conviction of the murderer. The evidence was wholly circumstantial, and the relation of it is well calculated to illustrate the great importance of the particular line of investigation, which it is the object of the present chapter to elucidate. For these reasons he is induced to compile from his notes the following brief sketch of the case. A Cornish peasant, engaged in attending upon the light-house on the western coast, was found dead in a field near the public road leading from Penzance to the "Land's end," on Sunday, December the 12th, 1813; he was lying in a dry ditch, with his stick at a little distance from him;

(*a*) See "Genuine Memoirs of the life of *Sir John Dinely Goodere, Bt.*" &c. by *Samuel Foote*. Also State Trials.

one of his shoes was down at the heel, and both were smeared with mud; his pockets were empty. The body was taken to a public house in the village, and the coroner having received notice of the occurrence, an inquisition was taken, and the verdict of wilful murder returned against some person or persons unknown. The body was afterwards buried, but a rumour having arisen that the anatomical inspection had not been sufficiently minute and satisfactory, it was, by an order of the magistrates, disinterred; and the author was desired to assist in the further investigation of the subject. Upon examining the body, which had not yet advanced so far in putrefaction as to obliterate the traces of violence, or to confuse the appearances they presented, patches, arising from extravasated blood, were seen in different parts of the throat, and distinct abrasions corresponding with the nails were visible; the face presented the physiognomy of a strangled man. On the chest, bruises, evidently occasioned by the pressure of the assailant's knees, were also noticed. Upon dissection the brain was found excessively turgid with blood. The rest of the organs appeared in a perfectly healthy, and natural condition. It is worthy of remark that the field in which the deceased was found contained several shafts of abandoned mines; upon visiting the spot the author observed tracks in the grass, as if it had been scraped, proceeding in a direction from the hedge next the public road to that in the opposite part of the field, and under which the body was found; near the former hedge also some fragments of a glass bottle were discovered. The deceased, it appeared, had been at Penzance for some medicine, and it was proved that he had left that town, on his return to the light-house, with a phial in his pocket.

All these circumstances combined, placed the matter beyond conjecture. He had evidently been strangled, probably at the spot where the glass fragments were found, which were undoubtedly the remains of his phial, broken during the scuffle; besides, it would appear that he had been dragged along the field from this spot to the opposite hedge, for marks denoting such an act were visible on the grass, and this received farther confirmation from the condition in which the shoes of the deceased were found. Who then committed the murder? From the circumstances of its having been perpetrated in a field containing several old mines, without any attempt on the part of the villain to avail himself of the advantage which these caverns would have afforded for the concealment of the dead body, the author was convinced that the perpetrator of the deed would be found in some stranger to the country, for such a one alone could be unacquainted with the mines to which we allude. The suggestion of this idea very naturally gave a direction to the line of inquiry. Were any suspicious strangers in Penzance or its neighbourhood? Had the deceased been seen in the society of any person unacquainted with the country? He had been seen, it was discovered, playing at cards in a public house with some of the privates of the artillery stationed in the Mount's Bay, amongst whom was a very powerful and athletic Irishman, of the name of *Burns*, who had lately landed, and immediately enlisted into the corps. *Burns* was accordingly arrested on suspicion, when the purse of the deceased containing thirty shillings was found on his person. He was, moreover, unable to shew where he was at the time the deceased left Penzance, in the evening; and he was subsequently recognised by two witnesses who had seen him accom-

panying the deceased on the road towards the Land's End. It is only necessary to add that he was convicted and hanged; and it is not the least satisfactory part of this case to state, that on the evening previous to his execution he confessed to the author, that all the circumstances of the case occurred precisely as we have stated, that he strangled his victim with a pocket handkerchief, but that from the difficulty of completing the act, he was compelled to press his knees upon his chest. In the year *1763*, a person of the name of *Beddingfield* was found lying near his bed, with his face on the floor, and with one hand round his neck. It was argued that he had probably fallen out of bed in a fit of apoplexy, and that the pressure of his own hand had occasioned the marks that were visible on his throat; and a verdict was returned in conformity with such an opinion. Circumstances, (*a*) however, arose which excited a strong suspicion against the wife and a man-servant named *Ringe*, and they were accordingly charged with the murder, tried at Bury St. Edmonds, and condemned. Before execution the man confessed that he had strangled the deceased, having seized him while asleep by the throat, with his left hand.

Whether the wounds observed in the body were necessarily of a mortal nature, or sufficiently severe to have caused immediate death?—It will be generally impossible to solve this problemn without the aid of dissection, for although such injuries may appear extensive, we have already in the course of the present inquiries shewn the fallacies to which such indications are exposed, (*see our chapter on wounds, vol.* ii, *page*

(*a*) "Genuine trial of *Margery Beddingfield* and *Richard Ringe*, for petty treason and murder. London 1762."

116) and the practitioner who ventures to give his judgment on such an occasion, without adequate data, will render himself contemptible in the eyes of the profession, and dishonest in the opinion of the public.

Whether they were inflicted during life?—In discriminating between a wound inflicted upon the living body, and one which has been artfully occasioned after death, for the purpose of embarrassing judicial inquiry, it will be essential to observe, whether any hemorrhage has taken place, externally, or internally, and, moreover, to ascertain whether the blood so effused had coagulated. An instructive illustration of this point is furnished in the very extraordinary trial (*a*) of *Green*, *Berry*, and *Hill* in the year 1678, for the murder of *Sir Edmonsbury Godfrey*, a zealous protestant magistrate, during the pretended popish plots in the reign of Charles the second. It appeared from the evidence of one *Praunce*, that *Sir Edmonsbury* was strangled by a handkerchief in Somerset house, on a Saturday night, and after remaining concealed until the following Wednesday, he was carried at midnight into the fields beyond Soho, where he was thrown into a ditch, and his own sword thrust through his body, in order to excite a belief that he had committed suicide. Upon the trial, Messrs. *Skillard* and *Cambridge*, surgeons, stated that the sword must have been passed through the body after death, *as there was no evacuation of blood*, which must have happened had such a wound been inflicted during life. (*a*) With regard, however, the fact of hemorrhage being received as a test of life, a few observations may be necessary; it must be remembered that

(*a*) See State Trials, vol. ii, p. 756; see also *Burnett's* Hist. of his own times, vol. I, p. 445.

extensive wounds may be inflicted on the living body, with but little or no effusion of blood, but such wounds always belong to the class of *lacerations*, see *vol.* ii, *p.* 123. On the other hand, the knife of the anatomist not unfrequently draws considerable blood from the dead body, and wounds have been known to bleed long after life has fled; a fact which, as we have already observed, has been raised by superstition into prophetic importance. The orifice of a vein that may have been opened during life will sometimes bleed afresh after death; this occurred to a very considerable extent in the body of the Prince Royal of Sweden, who had died of apoplexy. *John Lees*, (*a*) the subject of the noted inquest at Oldham, bled after he was laid in his coffin; but, under such circumstances, the blood is *never* found in the state of coagulation.

If it be determined that such wounds have been inflicted during life, it then becomes important to solve the following questions.

Whether they resulted from an act of suicide or otherwise; whether from accident or design?—There are certain acts of violence which we feel no hesitation in declaring are not likely to be accomplished by the individual himself; such are incisions, or gun-shot wounds on the back of the body, and, perhaps, fractures of the skull; with regard to wounds in the throat, the death of the *Earl of Essex*, during his imprisonment in the Tower, has given rise to much speculation, and the reader will find an interesting

(*a*) The whole proceedings before the Coroner's inquest at Oldham, &c. on the body of *John Lees*, who died of sabre wounds at Manchester; taken in short hand by *A. Dowling*. London, *Hone*, 1820.

digression upon the subject in the history of *Bishop Burnet.* Some stress has, in a late case, been laid upon the fact of the wound being even and regular, which it was asserted would not have happened had it been inflicted by the hand of an assassin—*because any struggle would have made it irregular.* This is really a refinement that we do not pretend to understand. Is not convulsive action likely to disturb even the cold and calculating admeasurements of the suicide? instances have frequently occurred where even the chin has been cut during the operation, as in the case which lately occurred near the Serpentine river in Hyde Park, and yet no grounds existed to excite the least suspicion of murder.

Where the individual has perished by fire arms, the circumstance of his fingers being found discoloured by the combustion of the powder in the pan has been alluded to by authors as a proof of suicide, and it certainly carries some weight with it, although the crafty assassin might contrive to produce such an appearance. The state of the linen of the deceased, as indicating the effects of a struggle, may furnish some evidence upon these occasions; and cases have occurred where bloody marks have been discovered on parts of the body, which, from their situation, could not have been produced by the deceased. In *Hargrave's* State Trials (*a*) there is a very remarkable instance of a woman who was found in bed with her throat cut, and a knife sticking in the floor near her; three of her relations were in an adjoining room, through which it was necessary to pass to the apartment of the deceased; the neighbours were alarmed, and the body was viewed; these relations

(*a*) Vol. x, *Appendix*, p. 29.

declared she must have destroyed herself; but, from a particular circumstance, they were suspected, and found guilty of the murder; for on the *left* hand, was observed the bloody mark of a *left* hand, which of course could not be that of the deceased. How often has the left hand (*a*) of the murderer betrayed his deeds of blood!

Whether the cloaths of the deceased betray any odour of spirit, tobacco, sourness, or putridity?—In every case of mysterious death it is an important object to ascertain whether the deceased had been in a state of intoxication; of which the odour of the clothes may in some cases furnish a presumptive proof. It will be seen by consulting our chapter on "Death by exposure to Cold," that the life of an individual may, under certain circumstances of intoxication, be extinguished by a very slight degree of cold; *see vol.* ii, *page* 60.

Whether any articles have been broken or injured in the pockets?—The case of the Cornish murder related at page 27 affords an example of the value of this inquiry; but in appreciating the indications which it may furnish, we must view the circumstance in relation to the other features of the case, when it may acquire an importance which the fact did not individually assume; or it may lose by such a comparison the little value which it appeared to possess.

Whether there is reason to believe that the deceased had been robbed?—We are to derive from this question a probable argument in support of the fact of

(*a*) In the case of Patch, who was left-handed, it was clearly shown by the relative position of the deceased, and the door from which he was shot, that the murderer must have exposed his person to the view of the deceased, unless he fired with the left hand. The guilt of *Patch* was for some time doubted, but the discovery of the pistol in the neighbouring dock a few years ago, has supplied the only link which was wanting to make the evidence against him complete.

suicide, for in such a case it is not reasonable to expect any evidence of robbery. In the unfortunate case of suicide lately committed in Hyde Park, a base sixpence was found in the pocket of the deceased; had he been plundered, the robber would not have left the base coin, which in the dark and hurry he could not have distinguished. In the instance of a travelling empiric, of the name of *Evans*, or *Evando*, as he called himself, for the sake of euphony, who was found dead in a ditch in Cornwall, the exact sum was discovered in his pocket, which he had taken in change at the last public house. Any memorandum found on the person of the deceased, in his own handwriting intended to convey directions, or his last wishes, to his friends, is a strong presumptive proof that he fell by his own hand. The remains of any poison found about him is one of those facts that is equally favourable to the suspicion of murder as of suicide. We must be allowed to observe that upon the occasion of an unknown person being found dead, some responsible individual should examine the contents of his pockets, and having, if possible, acquired every information as to his name and residence, he should carefully enclose every article so found in a paper, and place his seal upon the packet, and his signature, and the date of the event, upon the cover.

If the deceased be a female, whether there be any marks or bruises that would indicate the commission of a rape?—The importance of this inquiry need not be argued, nor is it necessary in this place to point out the indications which may confirm our suspicions upon this subject. We must refer the reader to our chapter on rape, *vol.* 1, *p.* 416. The interesting trial of *Abraham Thornton*, for the murder of *Mary Ashford*, abounds with curious evidence upon this point.

2. *Circumstances to be learnt by an examination of surrounding and collateral objects.*

The information which may be occasionally derived from the state of the objects surrounding the body, will be best illustrated by the numerous cases in which they have furnished the principal means of discovery.

Whether the spot in question be of a description to explain the cause of the deceased having been found there; or how far its retired situation excites the suspicion that the body has been conveyed thither for concealment, or some other purpose?—Having examined all the circumstances which attach to the *person* of the individual, we should direct our attention to the spot in which the body is found. The Cornish case which is related at *page* 27, offers an admirable illustration of the utility of such observations. The nature of the place may perhaps suggest the probability of the person having fallen down from some height, in which case any appearance of wounds must be examined with reference to such a suspicion. We may also in the progress of such an inquiry be led to conclude that the spot may have been infested with some unwholesome vapour, destructive of life; the various circumstances which may contribute to the generation of noxious air have been fully examined under the head of *Suffocation*, *vol.* ii, *p.* 48, and were we to discover a dead body in the vicinity of a lime-kiln, or in an unventilated apartment, where charcoal (*a*) had been burning, or

(*a*) See "An account of the symptoms and death of the sailors who were affected in consequence of a fire having been kindled in the hold of their vessel, and their neglecting to leave the hatches open, by *Dr. King*." Edinb. Med. and Surg. Journ. no. 26, April, 1811.

in a cellar where carbonic acid might probably have accumulated, we should derive an important clue for the investigation.

Whether any indications of a struggle having happened on the spot are visible on the ground, or herbage near the deceased; and whether any footsteps can be traced near the body?—The Cornish case presents itself to us again in illustration of this question. There are also several cases where impressions upon the snow have led to the detection of the guilty party. In the case of *Wm. Spiggot*, *Wm. Morris*, *David Morgan*, *Walter Evans*, *Charles Morgan*, and *David Llewellin*, for the murder of *Wm. Powell*, *Esq.* at Glenareth, in Caermarthenshire, March 30, 1770, footsteps were traced from *Powell's* house (a deep snow having just fallen) to that of *Charles Morgan*, who was in consequence apprehended, and did not long deny the fact. Some very interesting evidence was delivered upon the subject of footsteps, on the celebrated trial of *Abraham Thornton*, for the murder of *Mary Ashford*, at the Warwick assizes of 1817. *William Lovell*, a workman at Penn's Mills, and several other witnesses, spoke as to the presence and direction of the footsteps of a man and a woman, which approached each other at one spot; their appearance shewed that the persons had been running, and dodging each other, "as well from the stride, as the sinking in of the ground, and the little scrape at the toe of the woman's shoe." The footsteps were afterwards compared with the shoes of *Thornton*, and found to coincide; the shoes, moreover, had a particular nail, called a *sparrow bill*, the impression of which was also perceptible. The same comparison was made with the shoes of the unfortunate *Mary Ashford*, and with a result which appeared to be

equally satisfactory and conclusive. Instances have also occurred in which the presumption of guilt against certain persons has arisen from the absence of such marks; this happened in the murder of *Mr. Jeffries*, by *Elizabeth Jeffries*, his niece, and *John Swan*, his servant, at Walthamstow, in July 1751; in which case the perpetrators of the deed were suspected to have been domestics, from the single circumstance of the dew on the grass surrounding the house not having been disturbed on the morning of the murder, which must have happened, had any persons left the premises.

Has there been any thunder storm?—For an account of the appearances in the body of a person, who has been thus suddenly deprived of life, we must refer the reader to our chapter on "Death by Lightning," vol. ii, p. 63. It will, at the same time, be right to consider, whether the death of the person in question can have arisen from an exposure to the rays of the sun, which has occasionally happened in the harvest field—"And Manasses was her husband, of her tribe and kindred, who died in the barley harvest. For as he stood overseeing them that bound sheaves in the field, the heat came upon his head, and he fell on his bed, and died in the city of Bethulia." *Judith, chap.* viii, *v.* 2, 3. *Sauvage* relates the case of several young persons, who suffered an asphyxia from sleeping in an open field, exposed to the rays of the sun; and it may deserve notice in this place, that in such cases, hemorrhage from the nose is not an uncommon occurrence; the appearance of blood will thus receive an explanation which might otherwise excite unjust suspicions of violence.

Whether any, and what weapons are lying near the body; and what is their position in relation to it?—

Much light may be thrown upon the inquiry by an attentive examination of the weapons found near the deceased; and some interesting cases are recorded, wherein this circumstance alone led to their developement. In the year 1764, a citizen of Liege was found shot, and his own pistol was discovered lying near him; from which circumstance, together with that of no person having been seen to enter or leave the house of the deceased, it was concluded that he had destroyed himself; but on examining the ball, by which he had been killed, it was found to be too large ever to have entered that pistol; in consequence of which, suspicion fell upon the real murderers. The wadding of the pistol has also in several instances offered the means of affixing the accusation on the guilty. The Lord Chancellor, in a debate in the House of Lords, in November 1820, quoted a very curious case in which the wadding of the pistol was found to correspond with a torn letter in the possession of the murderer.

If the body is found in the water, are there any and what reasons for supposing that it was killed by other means, and subsequently thrown into the water?—This question has upon several occasions been discussed with great eagerness; see *the Reports of the Edinburgh Colleges in the case of Sir James Standfield,* in our *Appendix, p.* 225; and also *Extracts from the medical evidence in the case of Spencer Cowper, Esq. for the murder of Sarah Stout, ibid. p.* 230. We have already, under the consideration of the phenomena of drowning, *p.* 35, endeavoured to appreciate the true value of the several indications which have been received as physiological evidence upon this subject, such as the presence of water (*a*) in the stomach and

(*a*) If in addition to the presence of water in the stomach any weeds be found, the presumption is strengthened that the person had been

lungs, the buoyancy of the body, &c. We have therefore only to observe in this place, that upon such occasions there will generally exist collateral circumstances to fortify our judgment; where, for instance, mud, or sand, are found under the nails, or any grass or weeds are discovered in the grasp of the deceased, the inference will be strong that the person died under water; on the contrary, if we discover mortal wounds, or any marks of violence inflicted upon the body, by weapons, we may very justly suspect that the deceased was murdered, and subsequently thrown into the water. But in conducting this enquiry we must be aware of the fallacies to which it is exposed; a person may in the act of drowning accidentally receive bruises and lacerations, or he may have been driven against rocks and stakes by the force of the current. The following case, related by *Dr. Gordon Smith*, offers a very good illustration of this point "A few years ago, a man who had leaped from each of the three bridges into the Thames with impunity, undertook to repeat the exploit for a wager. Having jumped from London bridge he sunk and was drowned. When the body was found, it appeared that both his arms were dislocated, in consequence of having descended with them in the horizontal, instead of the perpendicular position." If we arrive at the conclusion that the body was drowned, we have next to inquire whether the event was accidental or malicious? and whether the act was perpetrated by the deceased or others? The solution of these problems is to be generally effected by the examination of what may be called the

drowned. This occurred in the case of *Mary Ashford*, the vegetable matter discovered in the stomach corresponded with that with which the pool was covered.

external circumstances of the case; the locality of the water may be such as to account for the deceased having accidentally fallen into it, or its situation may at once preclude the possibility of such an event. The suspicion of the person having been violently thrown into the water by the hands of the assassin, will be fortified by the discovery of footsteps on the brink, and by the indications of resistance on the part of the deceased, as manifested by the appearance of bruises on the arms and other members of the body. In the case of *Mr. Taylor* who was murdered at Hornsey, in December, 1818, marks of footsteps, deep in the ground, were discovered near the new river; and on taking out the body, the hands were found clenched, and contained grass, which he had torn from the bank. If the person be found in the water tied hand and foot, there is a strong presumption that he was forcibly placed in such a situation; and yet there are two instances on record which afford very extraordinary exceptions to the truth of such a conclusion. The one occurred in the end of June, 1816, in the case of a gauging-instrument maker, who had been missing from home for several days. His body was discovered floating down the Thames; and on being taken out, his wrists were found tied together, and made fast to his knees, which were in like manner secured to each other. He had been in a state of mental derangement for two years. The cord with which he had tied himself was recognised as one that had hung from the ceiling over his bed, by which he used to raise himself up, having been confined to his bed for several weeks; he was a good swimmer, and it was presumed he had taken the precaution to prevent himself from swimming. The verdict was "*found drowned.*" The other instance

occurred two years afterwards. A man, aged 28, with a wife and children, was reduced to great distress. On a certain day he took an affectionate leave of his family, declaring he would not return until he had obtained some employment, by which he should be able to procure them bread. The following day his body was taken out of the new river, with his hands and legs tied. A card with his address was found in his pocket; and also three-pence; when he left home he had five-pence, and it was supposed that he had purchased the cord with the deficient sum. The verdict in this case was "*insanity*."

If the deceased be found hanging by the neck, whether he was suspended during life, or hung up after death? Whether it was an act of suicide or murder?—In cases where the deceased has been hanged alive, we shall find the trace of the rope in the neck very distinctly marked by a deep discolouration; whereas, the effect occasioned by such a ligature upon the dead body, will be far less striking. We have also to inquire whether the deceased has any wounds, or whether, upon dissection, the usual appearances are found which generally occur in hanged persons. But, should any marks of external violence present themselves upon such an occasion, we must judge of them with caution. They may perhaps be purely accidental. *Dr. Male* supposes a case in which the person, with the view of speedily destroying life, may have thrown himself off with violence, broken the rope, and wounded himself by falling upon articles of furniture, and yet had sufficient fortitude again to suspend himself. "An apprentice boy, in my neighbourhood," says this author, "working alone in an attic, tied one end of a rope loosely round his neck whilst his master was from home, probably without

any intention of destroying himself, and twisted the other round the projecting part of the top of a door, the planks of which were irregular and somewhat divided; a small stool, on which he stood, slipped from under him, when he fell forwards, striking his temple against the corner of a box which cut him to the bone; he lay along the floor, his head and shoulders only elevated a few inches above it; the cord not being tied, had run nearly its whole length, and then caught between the planks of the door; in this state he perished. The wound was magnified by popular rumour into many, and vengeance was denounced against the innocent master, who was accused of having first killed, and afterwards suspended the boy. On examining the boy the mark of the cord was found to extend from ear to ear; the vessels of the brain were turgid, the thyroid cartilage broken; the nails blue, and the hands firmly closed. From this and other important circumstantial evidence, the coroner's jury were convinced that the charge was unfounded." *Dr. Smith* remarks that, except in the instance of children, or extremely feeble persons, it is very difficult to hang an individual by force, unless the situation be remote, and no interruption likely to take place; or the assailants be numerous and powerful enough, (as in the celebrated case of *Porteus*) to set all interference at defiance.

Persons have been accidentally hanged, as in the case above cited from the work of *Dr. Male*, and instances are recorded where the operation has been resorted to as a mode of exciting passion. In all such cases of doubt and difficulty, each particular circumstance, however minute, must be noticed—the nature of the ligature—the manner in which it is fixed—the state of surrounding objects, are often

capable of throwing light upon the transaction. In the case of *George Hebner*, a tailor, who was found hanging to the top of a bedstead, in a garret of a house of ill-fame in Dean Street, East Smithfield, kept by a widow of the name of *Hughes*, the manner in which the hands of the deceased were tied behind his back, and his handkerchief was drawn over his face, proved most decidedly that he had not strangled himself. Upon examining the rope round his neck, it was found to have been fastened by what is termed a sailor's knot; in consequence of which circumstance a sailor named *Richard Ludman*, together with the aforesaid *Eleanor Hughes*, were indicted for the murder, found guilty, and executed.

If the deceased be found in an apartment, whether it be in a house of ill-fame?—Although the act of sudden death in a brothel very naturally excites the suspicion that some act of violence may have been committed, yet this feeling should not be carried too far; we must remember that the individual has been thus exposed, in an increased degree, to the occurrence of several of those natural accidents by which life is so suddenly extinguished; apoplexy, hæmopthysis, and syncope have assailed those who might have been predisposed to such diseases, at the moment of sexual indulgence. In persons advanced in life the trunks of the internal, carotid, and basilary arteries are frequently diseased, and are therefore very liable to rupture whenever the blood is accumulated in any unusual quantity, or the circulation is preternaturally accelerated.

3. *Circumstances to be learnt by the Interrogation of competent witnesses.*

It is merely necessary to enumerate the facts which it is our duty to elicit by such an inquiry, in order to shew their importance and relations; we shall therefore conclude this part of our subject without any farther comments, and proceed to furnish such directions as may enable the medical witness to complete his investigation by the anatomical examination of the body, without which, our preceding researches can never be received as satisfactory and conclusive. "*Inspectio ejusmodi cadaveris adeo necessaria est, ut omissa ea, nihil certi de reo statui possit.*" (*a*)

4. *Circumstances to be learnt by Anatomical Dissection.*

After the observations which we have already offered upon the subject of wounds, it can be scarcely necessary to urge the necessity of a speedy examination of the more superficial lesions, which are likely to be effaced, or changed in character by the progress of decomposition; "*putredo mutat formam cadaveris et lesionem.*" The deeper wounds may at the same time be inspected, but the greatest care should be taken that they are not extended during the dissection, for unless they be preserved, as far as it is possible, in their natural condition, we shall not be able to establish a satisfactory connection between the external injury, and the internal lesions with which it may be complicated. Having complied with these injunctions, we are to proceed to lay open the cavities. The order in which these operations are to be performed is not of much moment; but let it be gene-

(*a*) Teichmeyer Inst. Med. Leg. p. 176.

rally understood that the discovery of what may appear sufficient to account for death in one cavity, ought never to prevent our proceeding to the investigation of the rest.

Dissection of the brain and its membranes.—The body having been placed on its breast, and the chin raised and supported by a block of wood, the anatomist must proceed by making an incision over the top of the head, from the root of one ear to that of the other; and then by dissecting off the integuments, so as to invert one flap over the face, and the other over the occiput, he will be able to discover whether the scalp has sustained any injury, as indicated by the presence of abscesses, sinuses, contusions, and extravasations; he will, at the same time, ascertain whether any fissure or fracture exist, or any morbid change has occurred in the bone, such as sponginess, exostosis, caries, or exfoliation. In performing this part of his duty, we trust he will not mistake, as *Hippocrates* (*a*) confesses he once did, a fracture for a suture, and vice versa. It is not always easy, however, to determine whether a fracture discovered in the cranium, was produced during life. If it should have occurred immediately before the death of the person, there will be found coagulated blood upon the bone and in the fissures; if the individual has survived for some time, there will be marks of inflammation, and perhaps the formation of pus in contact with the skull; but if a fracture has been occasioned in making the dissection, an accident which may occur in the most careful hands, the blood in the fracture will not be coagulated, nor will there be any effusion around the portions. The skull-cap may

(*a*) De Morb. Vulg. lib. v, sect. vii, 27.

be now removed; for which purpose the cranium is to be sawed in a circular direction, about a finger's breadth above the superciliary ridges, and lateral sinuses; the operation must be conducted with great care, or we shall be in danger of wounding the *dura mater;* the bone must be then divided by a few slight strokes with the chissel and mallet. We shall always find a strong adhesion between the inside of the cranium, and the *dura mater;* partly, in consequence of the small blood-vessels with which these surfaces are connected, and partly, from the close application of the fibrous structure of the membrane to the bone, and which will vary with the age of the subject, and the form of the skull; the handle of the scalpel carefully introduced will afford the best instrument for overcoming this resistance, and will not be liable to lacerate the *dura mater*, or to injure the brain. In effecting the separation, the *meningeal vessels* frequently deluge the whole surface with blood, a circumstance that deserves attention, in as much as their plenitude marks the congestive state of the brain; it shews also that the blood is in a liquid condition, a fact to which some importance has been attached, as it is supposed to occur more particularly in cases of suffocation. The inner surface of the skull may be inspected with the view of ascertaining whether it be carious. The *dura mater*, thus brought into view, may exhibit marks of inflammation; or coagulated blood or pus may be discovered on its surface, especially in cases where external violence has been inflicted; and it is particularly worthy of notice that such an extravasation, or injury, is not necessarily under the fracture, or part of the cranium upon which the violence that produced it, had been received; on the contrary it often happens that disor-

ganization occurs in the hemisphere opposite to that upon which the blow was struck; a phenomenon to which the term "*contre coup*" has been aptly applied. (*a*) The *dura mater* may now be removed and thrown back, by dividing it all round the margin of the skull, and separating its attachment to the *crista galli* with a pair of scissars; before we part, however, with this membrane, we should observe whether any osseous deposits, (*b*) or other morbid alterations are visible in its texture; for such changes are not uncommon in the *dura mater*, especially in the falx: the *tunica arachnoidea* thus brought into view may present various morbid appearances; it may be opaque, or water may be found effused under it. (*c*). The *pia mater* often exhibits its veins turgid with blood, which indicates that some impediment had existed to the return of the circulation from the head to the heart. It is very important to distinguish between this appearance and that which is the result of the inflammation of the membrane; in this latter case, it should be remembered, that the small *arterial* branches are the vessels gorged with blood; (*d*) and which are so multiplied as to form, by their numerous anastomoses, a beautiful network. In true inflammation also the membrane will be found thickened. There is still another source of fallacy with

(*a*) Recherches Anatomico-Pathologiques sur l'Encephale et Ses Dependances, par *F. Lallemand*. Paris 1820-21.

(*b*) In three cases in which these deposits were found in contact with the olfactory nerve, the patients had suffered much for a considerable time, previous to death, from the sensation of unpleasant odours.

(*c*) See cases illustrative of the Pathology of the Brain, by *R. Powell*, M.D. Med. Trans. vol. 5. *Dr. Martinet* describes a well marked case of *Arachnitis*, complicated with fracture of the cranium. Bulletin de l'Athenée de Med. de Paris.

(*d*) *Baillie's* Morbid Anatomy.

which the anatomist may have to contend in his examination of this organ, a state of vascular congestion, arising after death, from the effect of gravitation. In attending however to the position of the head, and to the circumstances above mentioned, it will not be difficult to establish a just diagnosis upon these occasions. Before cutting into the brain, we should observe whether the convolutions are furrowed as usual, for when much fluid is contained in the ventricles, as in hydrocephalus, the *sulci* are more or less obliterated. Such a change, therefore, will offer a precaution to the anatomist, to proceed slowly in his dissection, so that the accumulated fluid may not escape. Where a person has been suddenly killed, while in a state of health, the ventricles will, on examination, appear merely lubricated with a fluid; but in cases where the patient has died after protracted disease, more or less serum will be found in these cavities. In our examination of the substance of the brain, we ought to notice its consistence and tenacity, for in many recorded cases, a *part* of the medullary mass has been found so morbidly soft as to have assumed nearly the consistence of custard; and it has been said to have occurred in cases of fatuity; it seems, however, more correct to consider it as the effects of inflammation: the phenomenon must be carefully distinguished from that natural deliquescence which the *whole* of the brain undergoes after death, when in an incipient stage of putrefaction. In some instances, the texture of the brain has been found tougher than is natural, and even to have been dry and friable. (*See our observations upon the brain in cases of mania, vol.* i, *p.* 327.) Scrophulous and encysted tumours, hydatids, abscesses, and extravasated blood, may also occur, and its cavities may be

distended with fluid. The state of the larger blood-vessels should be attentively inspected, for in persons advanced in life there appears to be a strong disposition to disease in the internal carotid and basilary arteries. The great importance of minutely inspecting every part of the brain cannot be too frequently, or too forcible urged, in cases of forensic inquiry. The instances already recorded (*page* 16) are sufficient to sanction this assertion; and to these, we may add the following illustration which is to be found in the article *Cas Rares* of the *Dictionnaire des Sciences Medicales*, by *M. Fournier*, who was called upon for his opinion in a case of alleged murder at Brussels. (*a*) The deceased had quarrelled with another man, some blows had been interchanged, and he had died a fortnight afterwards, emaciated and completely exhausted. Two of the lowest order of practitioners in France, officiers de Santé, as they are called, inspected the body, and pronounced that death had taken place in consequence of the blows. *M. Fournier* discovered an extensive suppuration in the brain, with a very carious state of the inner surface of the cranium, and learnt that the deceased had been afflicted with head-aches for twenty years. He therefore declared it to be his opinion, that the man had died of a disease of long standing. In this opinion we concur, but it is not equally clear that the crisis was not accelerated by the violence which he had sustained. (*b*)

We ought not to quit the examination of the head, until we have examined the base of the cranium, in

(*a*) The reader will also be very much amused by the account of the dissection of *Charles* II, and of the appearances which supported the idea of his having died from poison. *Burnett's Hist. of his own times*, vol. ii, p. 230.

(*b*) The case of *John Lees*, which formed the subject of the Oldham inquest, appears in this respect to have borne some analogy; see also the case related by *Baron Larey*, p. 15.

order to determine whether any fracture exists in that part; a curious case is related by *Mr. Charles Bell*, (*a*) of a person who died suddenly some weeks after having received an injury of the head, when it appeared, on dissection, that the base of the skull had been fractured, and that the *foramen magnum* having been thus roughened, a sudden turn of the head had forced a spiculum of bone into the spinal marrow. The brain has also received fatal injuries from the introduction of pointed instruments through the orbits; *Macklin*, the comedian, was tried for killing a brother actor by the thrust of his cane. *Thomas Dangerfield*, one of the celebrated and perjured witnesses on the Popish plot, in the reign of Charles II, was killed by *Mr. Robert Francis*, by the blow of a cane, the end of which penetrated the orbit. (*b*) The author also well remembers the case of an old woman, who, in a fit of intoxication, fell to the ground upon the stem of the tobacco-pipe with which she was smoking, when it penetrated the orbit, and occasioned immediate death; the cause of her dissolution was never suspected until after dissection, as no external wound was visible. In some cases it may be considered expedient to extend our anatomical researches into the spinal column, which may be effected by sawing off the transverse processes. The cervical vertebræ should always be examined where dislocation of the neck can be suspected; for in such cases death may be produced without leaving any external vestige of the injury. This has frequently occurred to coachmen and others, who have been crushed while driving under low archways, by which the nerves, necessary for the support

(*a*) Surgical Observat. (*b*) *Cobbett's* State Trials, vol. ii, p. 503.

of the vital organs have been compressed or lacerated, and death has in consequence ensued. If the cervical vertebræ should be dislocated, a general paralysis will follow, and life can no longer be maintained. *M. Petit* relates the case of a boy suspended by the head, who striving to disengage himself dropped down dead; and *Dr. Monro* saw a case where four of the cervical vertebræ were dislocated by a fall, which ended fatally in a few hours.

Dissection of the contents of the thorax.—An incision must be made through the integuments, in a straight line from the *os hyoides* to the navel; we are then to open into the cavity of the abdomen, for the sake of affording the anatomist free space for his dissections in the chest; and this is to be effected by incisions from the navel to each spine of the ilium, so that we shall have thus described by our dissection a figure resembling the letter Y inverted, thus ⅄. In performing this part of our labour, it is essentially necessary to avoid puncturing or injuring any of the viscera; where such a blunder has been committed the dissection has lost much of its value. The integuments of the breast are then to be carefully dissected so as to expose the cartilaginous articulations of the ribs, which must be cut through on both sides; the clavicles should also at the same time be separated from the sternum, by dividing the loose cartilage which unites them. The latter bone, together with the cartilaginous portions of the ribs, must be next turned upwards over the face, so that the cavity of the thorax shall be brought into view. In some cases it will be found expedient to make a still more extensive exposure of this cavity; for which purpose a broader flap must be turned up in front, by extending our dissection of the parietes of

the thorax farther towards the back ; and, instead of cutting through the cartilaginous extremities of the ribs, dividing the bones themselves with a saw. In bending back the sternum, or flap in front, we must take care and divide the *mediastinum* with the scalpel as near the bone as possible, in order to avoid making any opening into the *pericardium*, which would otherwise be very apt to happen. As soon as an opening is effected into the thoracic cavity, the lungs collapse, unless the adhesions formed between them and the pleura should prevent it. Our first object will be to observe whether any quantity of fluid is present in the chest, and whether it be limpid, as in dropsy ; turbid and containing flakes of coagulated lymph, as in cases preceded by much inflammatory action ; or purulent, as in empyema. Having removed the liquid, should any be present, by the application of a large sponge, we must proceed to examine the lungs, as to their colour and general appearance ; and, by the introduction of a blow-pipe into the trachea, we should by means of the mouth or bellows inflate these organs, so as to ascertain the degree of distention of which they are susceptible. We may at the same time inspect their structure more minutely by raising each lobe with the hand, introduced into the cavity of the thorax for that purpose. We are next to cut into their substance in order to observe whether they are gorged with blood, and inflamed ; whether they are crepitous and light, or dense like liver ; and whether they contain any tubercles ; should these latter bodies be discovered, we have to ascertain their magnitude, extent, and maturity, and whether any of them have been developed into *vomicæ*. The anatomist should be cautioned not to mistake the deep colour, and compact

texture which occur in the depending portions of the lungs, from the mere accumulation of blood in consequence of gravitation, for an inflamed state of the organs; in which latter case a crowd of fine vessels injected with blood of a florid colour furnish a diagnosis that cannot be mistaken.

In cases where a violent effort has preceded death, violet-coloured spots containing venous blood may be perceived on the surface of the lungs, and which are true ecchymoses, occasioned by the rupture of some small vessels. Such phenomena must be carefully distinguished from the livid, black spots, which have been observed in cases of narcotic poisoning, and which are characterised by a more dense, and less crepitating texture. In this stage of the dissection, we may conveniently extend our examination into the trachea, and bronchiæ, and observe whether these tubes contain frothy mucus as in drowning; coagulated blood, as in pulmonary hemorrhage; pus, as in the event of the rupture of a vomica or impostume; or ropy and tenacious mucus or lymph, as in croup, tracheal inflammation, and bronchitis; or chyme, as may occur in cases of intoxication, and diseases of the brain, where vomiting has taken place during a state of insensibility. (*a*) We shall at the

(*a*) We have already alluded to such a cause of suffocation, (see p. 58 and 438.) The following instructive case has been transmitted to us by *Mr. Alcock*, whose zeal and acumen in anatomical researches are as honourable to himself, as they are useful to the profession of which he is so active a member.

"*Wm. Thompson*, æt. 36, formerly a soldier of the 27th regt. late a watchman of St. James's parish, had had three fits, stated to be epileptic, within the last two years.

"Dec. 9th 1821, he was attacked by another fit, having the usual character of epilepsy, which terminated fatally. In the morning he appeared in his usual health, and had remarked to his wife that "he was as well as ever he had been in his life." He ate largely of pork,

same time be enabled to ascertain whether any mechanical obstruction, from the presence of foreign bodies, exists in the pulmonary passages, and which might have occasioned death to the patient, as related under our history of suffocation, vol. ii, p. 57.

with sage and onions, for dinner, about one o'clock. About five he was rather unwell, and a little before six " went off in a fit." He had frequent convulsions " as rapidly as he could have them," (his wife's statement) from the time he was taken ill till he died. There was no sickness—no vomiting. He had lain upon his back for some time; he was turned upon his side and suddenly expired. He never spoke from the time of the attack till his death. A week previously he had complained of head-ache, but not on the day of his illness. He was extremely subject to flatulence. He did not cough at any time during the attack which immediately preceded his death. For some years past he had been unable to lie upon his right side.

" He was largely bled from the arm; cold applications were freely applied to the head, with some temporary mitigation of the convulsions. Some medicines were directed, but as the state of insensibility in which he was, precluded swallowing, it may be doubted whether they ever reached his stomach. His pulse was full and frequent, but he was too unsteady to allow it to be counted. The pupils were contracted to points; but on the recurrence of the convulsions became widely dilated. After the cold affusion over the head, and as the convulsions abated, they gradually contracted.

" The examination of the morbid appearances was made, four days after death, by *Mr. Alcock*, in the presence of *Mr. C. T. Haden*, surgeon, and others.

" *External appearances*, those of a very athletic, muscular subject. No external appearance of injury. Slight shew of putrefaction on the abdominal parietes.

" *The head* was carefully and minutely examined. The vessels of the brain were distended with blood, but in no degree sufficient to explain the cause of death. The brain was firm and natural in every part. The choroid plexus of the right side was studded with a few small hydatid-like vesicles. The spinal marrow, as far as could be seen through the foramen magnum, was free from disease. The ventricles contained about two fluid drachms of liquid, and about the same quantity was found in the base of the skull when the brain was removed.

" *The chest.* The right lung adhered universally, but its structure was natural; the left lung was somewhat gorged with blood; no preternatural adhesions. About from four to eight ounces of bloody fluid in the left cavity of the chest. The heart was loaded with fat, and had on

The *pericardium* may now be laid open by a longitudinal incision, and we should note the quantity of fluid found in this cavity; in that of a healthy subject there is generally as much as a tea-spoonful of serum. It is important also that we should observe the quality, as well as quantity, of this liquor. Blood has occasionally been found in this situation, when neither a rupture of the heart, or any of its vessels could be discovered; in such cases *Dr. Baillie* is of opinion that the blood has either passed through the coats of the vessels upon the surface of the heart, by transudation, or been poured out by the relaxed extremities of the small vessels opening upon the surface of that portion of *pericardium* which

the outer surface of the right ventricle a patch of lymph like a thin layer of coagulated albumen. Several smaller spots of the same kind on the right auricle; but none of them penetrated into the substance.

"*Abdomen.* The liver adhered in numerous parts, and very extensively to the peritoneum. The stomach was enormously large and distended with food and air; the small intestines were also somewhat more distended than usual, but exhibited no appearance of disease sufficient to account for the death of the patient. The spleen was small and unhealthy, having several white patches on its surface.

"Thus far no satisfactory explanation of the cause of death appeared. And here, according to the usual mode of conducting examinations, the investigation would have terminated, but I consider it essential in every case to examine the air-passages. On examining the bronchiæ of the left side, the principal ramifications and some of the smaller were filled with a pultaceous substance of a dirty greenish hue and heterogenous texture, resembling food which had undergone some degree of digestion: it completely filled the left bronchia. The right bronchia and its ramifications were quite filled with similar matter, and the trachea was also completely filled at the lower part, so that breathing in such a state must have been impossible. That the matter filling up the air passages consisted of chyme from the stomach became evident, from its perfect similarity to that which remained in the stomach."

Since the receipt of the above interesting communication from *Mr. Alcock*, we have found upon an inquiry amongst the carcase butchers, that the presence of food in the pulmonary passages is by no means a rare occurrence in those animals that have been struck on the head.

forms the immediate covering of the heart. (*a*) The general appearance of the heart, as to colour, flaccidity, size, and external character, should be observed before its cavities are opened; for the energy of the heart may, in some degree, be inferred from the tension of its fibres, and the red colour of its substance; on the contrary, the opposite appearances would indicate a very different condition of this vital organ, as is well illustrated in the *asphyxia idiopathica* of *Mr. Chevalier.* (*b*) It is not very unusual to find adhesions connecting the heart more or less closely to the pericardium; and it is perhaps worthy of remark that the length of these adhesions will furnish, in some measure, an indication of the interval that has elapsed, since the occurrence of the inflammation by which they were produced; for they become gradually elongated by the heart's motion. *Dr. Baillie* has noticed in his "Morbid Anatomy" an appearance which the author has frequently met with in his dissections,—a white opaque spot, as if from a thickening of the pericardium; in some cases, it is not broader than a sixpence, at other times, it equals in size that of a crown piece; it is most commonly situated on the surface of the right ventricle, and consists of an adventitious membrane formed on a portion of the pericardium, which covers the heart, and may be easily dissected off, so as to leave that membrane entire. The attention of the enquirer is directed to the subject with a view to remind him, that the appearance is one that ought not to be considered as morbid in its origin, or dangerous in its effects, In acute rheumatism a fatal translation of the disease to the heart sometimes occurs, in which case, its sur-

(*a*) Morbid Anatomy, p. 37.—Med. Observ. vol. iv, p. 380—Memoirs of Med. Soc. vol. i, p. 228.

(*b*) Medico-Chirurg. Trans. vol. i; and the present work vol. ii, p. 30.

face will be found encrusted with coaguable lymph. —The condition of the blood-vessels forms the next object of research; and they should be examined previous to the removal of the heart, as to their calibre, and thickness, and whether any inflammatory indications are observable, or any aneurism; this latter disease has often existed without exciting any suspicion during life. In opening the body of George II, the aorta was found callous at the lower border of its curvature, and so dilated at its upper border, that it was as thin as the finest paper, in which part the rupture took place, and which was succeeded by a fatal hemorrhage; and yet the king, before his death, had not the slightest symptom that appeared to deserve much attention. In every case of sudden death the heart should be removed from the body for the purpose of examination, and no anatomical evidence should be received as conclusive, unless such an operation has been duly performed. For this purpose, the blood-vessels should be first secured by ligatures, for it is very essential to prevent the effusion of blood; and, having then separated it from its attachments, we should proceed to examine the organ in the following manner. Slit open, longitudinally, by means of scissars, the right auricle, at its foreside, then make an incision from the mouth of the pulmonary artery to the point of the heart, guarding against the accident of injuring the two sets of valves; now cut open the whole length of the pulmonary artery, except at its beginning, and at its valves, which ought to be left entire; lastly, open the pulmonary veins, and then the left auricle and ventricle, in a similar manner with what was done to the corresponding parts of the right side.

We beg to direct the attentive consideration of the anatomist to this important part of the inquiry; he

ought to notice the quantity of blood contained in the cavities of this organ, as well as its colour, and state of coagulation, especially in relation to the arterial and venous sides of the heart; the indications which such an examination may afford will be fully appreciated by referring to our chapter upon "the causes and phenomena of sudden death," and that upon "suffocation." In examining the cavities of the heart, especially the ventricles, it not unfrequently happens, that a mass of coagulated lymph, of a yellowish colour, and of considerable firmness, is found to occupy them; this phenomenon, from the manner in which its processes extend into the fasciculi of muscular fibres of the heart, has acquired the name of "*polypus of the heart*," and was regarded by the older anatomists as a very common and fatal disease. It is necessary to observe that the phenomenon is now better understood, and it is universally admitted to be the result of slow coagulation after death. The state of the valves of the heart should be attentively inspected, for a disease in these parts may have been the cause of the sudden death which we are endeavouring to discover. The three *semi-lunar* valves at the origin of the aorta, and the *mitral valves*, are sometimes in a state of ossification; those placed at the commencement of the pulmonary artery, and the *tricuspid* are less disposed to take on morbid action than the preceding ones that occupy the arterial side; indeed, there are very few well authenticated instances of such a change. Such a state of the valves of the heart necessarily places the life of the individual in extreme jeopardy, a rupture may be induced, and thus prove instantly fatal, or the action of the heart may be suddenly arrested, and a fatal syncope be the result; and from the suddenness with which

death takes place in such cases, there is no doubt that many persons so dying, have been erroneously included in the list of apoplectic deaths. In certain diseased states of the valves, the extremities of the body become gangrenous, as if the heart were unable to propel its blood to the extreme parts: the author well remembers two females who were admitted into the Westminster hospital, with a disease of this kind, in which the gangrene gradually extended upwards, and that, after death, the valves of the heart were found ossified. The coronary arteries are occasionally ossified, a circumstance which often accompanies a diseased state of the valves of the heart, and that of the aorta; a change which has been regarded as giving rise to the disease, termed *angina pectoris*, but which would seem to be symptomatic of any morbid state of the heart. In some cases the heart itself has been found ruptured; we have already offered some observations upon this event, under the history of syncope, p. 27. *Dr. Baillie* has seen only one case, and in that, the blood escaped into the pericardium, and the person instantly expired.

Examination of the abdomen.—In proceeding to the examination of this cavity, and its contents, the first appearance to be noticed, is that of the *peritoneum*, in which we have to observe whether any marks of inflammation exist, as displayed by a crowd of very small vessels, injected with florid blood, and a change in the texture of the membrane, by which it appears to be thickened, more pulpy, and less transparent. The existence and character of any fluid in the abdominal cavity should be noted, for its nature will be found to be immediately connected with the nature and extent of the disease by which it has been produced; if the liver be schirrous, the fluid will be

tinged with bile, and of a yellowish colour; if extreme debility accompany the disease, it will often be of a chocolate colour, from the admixture of blood; should no disease exist in any of the viscera, it will resemble that of the serum of the blood. Previous to the removal of the viscera for more minute examination, it will be proper to observe their general situation and appearance, and to notice particularly whether the calibre of the visceral tube be natural, distended, or contracted; in some instances its diameter is sensibly diminished, as in cases of poisoning by lead. It sometimes occurs that the intestines are glued together with extravasated lymph; and, at others, that the abdominal viscera are more or less joined together by adhesions, which are the effects of former inflammation; these adhesions become gradually so elongated as to produce little or no inconvenience. If upon opening the cavity of the abdomen we should have reason to suspect the existence of any perforations in the stomach or bowels, the anatomist must proceed with great caution, so as not to enlarge their diameters, or alter their appearance. In the case of *Miss Burns*, the medical report lost much of its value, from the want of due precaution in this particular; *see our account of the dissection, vol.* ii, *page* 178. Should the contents of the stomach or intestines have escaped into the general cavity, we should be careful in collecting such matter, with a view to its future analysis. The size and appearance of the stomach must be noted, and we should observe whether any marks of inflammation, or gangrene, are visible on its external surface; in tracing the intestinal tube through its course, any appearance of inflammation, or phlogosis, should be attentively examined; for which purpose a ligature may be passed at some dis-

tance above and below the patch, and the portions of the intestine be then removed. In many cases it will be essential to remove the stomach, as where poisoning is suspected; for which purpose double ligatures, about an inch asunder, must be placed above the *cardia*, and similar ones in the *duodenum;* the division may then be made by the scalpel in the space between them. The stomach should be examined without delay, for no one who has not been engaged in such researches, can form an idea of the rapidity with which this viscus loses its characteristic appearances by exposure to air. The stomach is to be slit open with a pair of scissars, care being taken that none of its contents are lost. If the deceased had been found in the water, the quantity of that fluid, found in this viscus, should be noted; and under such circumstances, the presence of any weed, mud, or other extraneous matter, requires particular notice. The quantity of alimentary matter will also afford an object of remark, and it will be right to observe whether, by odour or inflammability, the presence of any spirit can be detected. Having then disposed of the contents of the stomach, and referred them to the chemist for examination, we proceed to examine the viscus itself; in the first place, we should be careful in ascertaining whether any white, or shining particles adhere to its coats; if so, the substance must be preserved for future analysis; the *cardia* and whole interior of the stomach is to be carefully inspected, and every indication of inflammation, ulceration, gangrene, and schirrosity, is to be noted in reference to its exact situation and appearance; with a view to deduce an opinion as to the probability of its being the effect of poisonous ingesta, or of recent, or remote disease. The mucous membrane of

the stomach should be squeezed between the fingers, and the nature of the matter, if any should ooze out, must be noted, which on some occasions will furnish a valuable diagnosis; where, for instance, the person had died of *melæna*, a black matter, similar to that vomited will exude, a phenomenon which is never visible in cases of acrid or corrosive poisoning. We have already entered so fully into the history of gastric perforations, that it will be only necessary to allude to them on this occasion; *see vol.* i, *page* 164. The state of the villous coat should always be minutely inspected, we should however be cautious in pronouncing every red appearance as indicative of inflammation; it may in some cases depend upon the presence of colouring matter derived from the ingesta; (*see the case related in vol.* ii, *p.* 231.) Nor ought the state of the œsophagus to be overlooked, which in cases of poisoning will afford an important indication; it should, therefore, be removed from the body; had this dissection been performed in the case of *Miss Burns*, the medical witnesses on that memorable occasion, would have been spared, at least, one great cause of censure. It is not impossible but that the œsophagus may be ruptured in a violent paroxysm of vomiting, and thus be the cause of death. *Boerhaave* relates an interesting case of this kind, which occurred to *Baron Van Wassener*, Admiral of Holland.

Rupture of the stomach is an occurrence which sometimes takes place from the action of vomiting, during the progress of ulceration, when the membranes of this viscus are nearly perforated. It also occasionally happens from external violence. In the *Medical Repository*, (*a*) a case of ruptured stomach is

(*a*) Feb. 1822, vol. xvii.

related by *Mr. Brown*, in which the accident must have been occasioned by the action of the diaphragm and abdominal muscles, at the time of exertion, the stomach of the individual having, from disease, been less capable of sustaining any degree of violence. The following are the particulars of the case; "A coal-heaver, aged 50, whilst stooping in the act of lifting some coals, placed his hand suddenly on the pit of the stomach, and complained of severe pain in that situation; this was immediately succeeded by two deep sighs, when he dropped down and expired. On dissection, the parts immediately round the opening were in a higher state of vascularity than the rest, and put on a decidedly torn appearance, which was also observable in the peritoneal coat."

In pursuing the track of the alimentary canal we have to observe whether any marks of peritoneal inflammation present themselves; and whether any signs of inflammation in the muscular or mucous coats are visible through the transparent parietes of the intestine; and although no appearance of this kind can be discovered on the external coat of the bowels, we are not, on that account, to conclude that they have been free from inflammation; we must persevere in our dissection, and slit open the intestines in different parts, especially at the entrance of the *ilium* into the *colon;* the valve of the latter gut should also be inspected; nor should the *rectum* escape our attention, for its extremity is sometimes inflamed together with the stomach, while the intermediate portions of the canal are not in the least affected; this peculiarity occurs in many cases of poisoning, as those, for instance, in which colocynth or elaterium have been exhibited. An empoisoned clyster may have been administered; or, as in the case of *King Edward*

II, a hot poker, or some other instrument thrust up the rectum. We should also in this part of the dissection, ascertain whether any *intus-susceptio* has taken place, a derangement not very rare, and frequently fatal; it consists in a portion of gut passing for some length within another portion, and dragging along with it a part of the mesentery; it may take place in any part of the canal, but it more usually occurs in the small intestines, especially where the ilium terminates in the *colon;* in the examination of infants an *intus-susceptio* is not unfrequently found, which had been unattended with mischief, and in which the natural peristaltic motion of the intestines would have easily disentangled them; but, in other cases, an unrelenting obstruction is established, inflammation follows, and life is soon terminated, as was exemplified in the case of the infant Princess Elizabeth of Clarence.

The liver may present several morbid phenomena, which, in a dissection instituted for the purpose of discovering the cause of death, ought not to be overlooked. It may also be found ruptured, an occurrence which may take place where little or no external injury can be perceived, as from a sudden fall, or from the application of strong pressure applied to the upper part of the abdomen, such as might be occasioned by the passage of a heavy carriage over the body. *Morgagni* relates several instances of ruptured liver, by mechanical causes, without any considerable injury of the integuments. In the *Medical Transactions of the College of Physicians*, (*a*) a very interesting case is communicated by *Dr. George Pearson*, of a young man who fell with his *right hy-*

(*a*) Vol. iii, p. 577

pogastrium, and *epigastrium*, upon the edge of a pail, which he held in his hand, as the sixth step of a ladder, upon which he was standing, suddenly broke; his death happened ten hours after the accident, and upon dissection, the right lobe of the liver was discovered divided, in an oblique direction, through its whole substance, from its extremity on the right side, to the border of the left lobe; the two portions being only connected by the *vena cava*, and the trunks of the *venæ cavæ hepaticæ*.

The author has been informed by *Dr. Harrison* that, while at *Mantua*, he saw a man who had received a kick on the right *hypochondrium* from a horse that he was shoeing; he did not complain of much pain at the time, but exhibited an anxious countenance, and was attacked with *coffee-ground* vomiting. He died on the following day, and upon opening the abdomen the liver was found ruptured, and the peritoneum inflamed. (*a*)

The spleen may be brought into view for our examination by drawing the stomach towards the right side, when the one viscus will follow the other. This organ, like the liver, may be ruptured by violence; of which we have already cited an instance (*b*).

The *pancreas* is to be seen by tearing through the great omentum, between the large curve of the stomach, and the arch of the colon. The anatomist will

(*a*) See also "Cases of Ruptured Spleen and Liver from external injury," by *Dr. Chisholm*. Edinb. Med. and Surg. Journ. for July, 1811.

(*b*) See the case of *Bartholomew Quain*, vol. ii, p. 123.

In the year 1801 *Richard Starke* was executed at Newgate for the wilful murder of *Mary*, his wife, in Clement's Lane, by dragging her on the floor by the hair of her head, and inhumanly kicking her. *Mr. Crowther* and *Mr. Andre*, surgeons, were of opinion that she died in consequence of the rupture of the spleen, which appeared to them to have been occasioned by bruises.

proceed to the examination of the remaining structures in the abdomen with a facility that renders any farther directions unnecessary; we have only to repeat that in cases of forensic interest, the inspection cannot be too minute. The appearance of the kidneys, although not generally an object of dissection, ought to be noticed, as it is frequently connected with the exhibition of poisons; like the other solid viscera too, the kidneys may be ruptured by external violence, and several instances are recorded of sudden death having been thus occasioned.

Examination of the uterus and its appendages.—In the case of a female the organs of generation should always be inspected; very important conclusions may be deduced from the discovery of an unimpregnated uterus. In the case of *Miss Burns*, to which we have so frequently alluded in the progress of our work, this part of the dissection was so incomplete as to occasion considerable dissatisfaction. The uterus and its appendages having been carefully removed from the body, we should proceed to expose the cavity of the former by an incision, from near the *os tincæ* to the *fundus*, and by a transverse section at the *fundus*, between the inner ends of the *fallopian tubes*. This organ is liable, amongst other diseases, to inflammation, ulceration, schirrus, tubercles, polypus, dropsy, and organised masses, or *moles*; upon which we shall offer such observations as appear to connect the dissection with questions of forensic interest. In an adult and unimpregnated female its length is about $2\frac{1}{2}$ inches; its thickness, 1 inch; its breadth at the fundus $1\frac{1}{2}$ or 2 inches, and at the cervix about 10 lines. Although it returns after parturition to its original size, it never becomes again so small as it was in the virgin. In women who have borne

many children, the neck of the uterus is generally thicker, and more rounded; its orifice, or *os tincæ*, is always very gaping, and the lips more or less irregular, presenting generally one or more grooves, or chops, separated by what appear like tubercles. The *os uteri* may, however, be as regular in its figure in women who have borne children, as in others; and on the contrary, it may present in the latter, those irregularities which are more usual in the former; hence the inferences drawn from the state of this part, in cases where infanticide is suspected, or where parturition is supposed to have been concealed, cannot be received as being unexceptionable, although they will add to the weight of evidence, and assist us, in conjunction with other evidence, in attaining that high degree of probability, which practically amounts to certainty. The cavity of the *cervix uteri* undergoes also a change in form and appearance, which it is necessary to notice, although we are not disposed to assign very great importance to its indications. In women who have never borne children, the figure of the cavity may be said to resemble that of two cones joined bases to base, more capacious in the middle than at the two extremities; but, from the time of conception, that extremity of the canal, which opens into the vagina, is dilated; and, after parturition has once occurred, it is always found much wider than before, when it represents a cone with the basis towards the *vagina*, and the apex towards the *fundus uteri*. By a schirrous enlargement, the uterus may arrive at a very considerable size. *Dr. Baillie* has seen it as large as the gravid uterus at the sixth month; the cavity may also enlarge and contain a *polypus*, which is a very common disease at middle or advanced age; it has been defined "a diseased

mass, which adheres to some part of the cavity of the uterus, by a kind of neck, or narrower portion." An attempt was made on the trial of *Charles Angus* to explain the appearance presented by the uterus of *Miss Burns*, upon the supposition of an *hydatid* having been recently ejected from it, (*see vol.* i, *p.* 254.) Water has been known to have accumulated in very considerable quantities in the cavity of the uterus, (*a*) in some cases to the amount of fifty, sixty, or even a hundred pints.

If a woman die from hemorrhage, or from any other cause in child-birth, the appearances that will present themselves on dissection have been thus clearly described by *Professor Burns*. (*b*) "The uterus is found like a large flattened pouch, from nine to twelve inches long; the cavity contains coagula, or a bloody fluid, and its surface is covered by the remains of the decidua. Often the marks of the attachment of the *placenta* are very visible. This part is of a dark colour; so that the uterus is thought to be gangrenous by those who are not aware of the circumstance. The surface being cleaned, the sound substance of the womb is seen; the vessels are extremely large and numerous; the fallopian tubes, round ligaments, and surface of the ovaria, are so vascular that they have a purple colour. The spot where the ovum escaped is more vascular than the rest of the ovarian surface. This state of the uterine appendages continues until the womb has returned to its unimpregnated state. A week after delivery, the womb is as large as two fists; at the end of a fortnight, it will be found about six inches long, generally lying obliquely to one side; the inner surface is still bloody, and covered parti-

(*a*) *Lieutaud.* T. 1, p. 319 and 333.
(*b*) Principles of Midwifery, edit. 4, page 451.

ally with a pulpy substance like decidua. The muscularity is distinct, and the orbicular direction of the fibres round the orifice of the tubes very evident. The substance is whitish. The intestines have not yet assumed the same order as usual; but the distended cæcum is often more prominent than the rest. It is a month, at least, before the uterus returns to its natural state, but the os uteri rarely, if ever, closes to the same degree as in the virgin state."

The ovaria are susceptible of very considerable enlargement by diseases, so as to occasion the appearance of pregnancy, the most common of which is dropsy; in some cases the whole substance is converted into a capsule containing fluid, so large as to occupy nearly the whole cavity of the abdomen. There is one phenomenon, connected with the morbid anatomy of these organs, that deserves particular notice in this work, as being a subject in some degree connected with judicial enquiry—the change of these parts into a fatty substance containing hair and teeth! these appearances have been often regarded as imperfect ova, in consequence of impregnation, but it should be generally known that they take place without any intercourse between the sexes, and appear to depend upon causes very remote from those to which we allude. (*a*) In our examination of the ovaria, it is essential to remark whether any *corpus luteum* be present; and upon this subject and the value of its indications, it will be necessary to offer a few remarks. The *corpora lutea* are oblong glandular bodies, found in the ovaria of pregnant animals; they have been regarded as the *calyces*, from which

(*a*) See a paper in the Philosophical Transactions, no. 309, p. 2387, entitled "Balls of hair taken from the uterus and ovaria of several women, by *Mr. James Yonge.*"

the impregnated ovum has dropped; (*a*) they are largest and most conspicuous in the early state of pregnancy, and remain for some time after delivery, when they gradually fade and wither until they disappear. The phenomenon has been eagerly seized by the juridical physician as furnishing an indication of pregnancy; and, to a certain degree, the test may be admitted; but cases have occurred in which a *corpus luteum* has been found, where impregnation could not have occurred; (*b*) it is probable that upon certain occasions extreme salacity may disengage an ovum, and thus produce the *corpus luteum*, although the former without sexual intercourse can never be developed in the uterus; but this is an exception to the general law of Nature, and the *corpus luteum* may still be regarded as a presumptive proof of pregnancy. *Mr. Stanley*, in a very excellent memoir, published in the *Medical Transactions of the College*, *vol.* vi, observes that "the *corpora lutea* in the ovaries of virgins may, in general, be distinguished from those which are the consequence of impregnation, by their smaller size."

After all that has been said, our opinion in a case of supposed impregnation must, in the earlier stages, be formed from a review of all the circumstances appertaining to the condition of the uterus, ovaria, and fallopian tubes; and should these present such appearances as they usually assume in pregnancy, and

(*a*) See our Physiological History of Conception and Utero-gestation, vol. i, p. 230.—*Dr. Blundell's* Memoir, entitled "Experiments on a few controverted points respecting the Physiology of Generation." *Medico-Chirurg. Trans. vol.* x, *p.* 245.

(*b*) In the year 1788, *Blumenbach* shewed that *corpora lutea* may exist in the ovaries of virgins (Comment. Soc. Reg. Scient. Gotting. vol. ix.) *Cuvier* has also noticed the appearance of cicatrices in the ovaria of women who had never known any intercourse with the male.

the condition of the mammæ should at the same time agree with them, the proof is strongly presumptive; although it must fall short of the demonstration which the actual inspection of the *ovum in utero* can alone afford.

The external parts of generation ought also to constitute an object of inspection. We have already considered the degree of evidence which they are capable of affording upon the subject of virginity, *vol.* i, *p. 203, 429.* In examining the vagina, it will be necessary to observe whether any shining or gritty particles are discoverable, *(see vol.* ii, *p. 222.)* It is also possible that some hard body may have been introduced into the genital organs, for a felonious purpose; a trial for a crime of this nature took place at Durham in the year 1781, when *Magaret Tinckler* was indicted for the murder of *Janet Parkinson*, by having inserted wooden skewers into the womb, for the purpose of producing abortion; it appeared on dissection that there were two holes, in a gangrenous condition, which these extraneous bodies had occasioned, and to which the deceased had fallen a victim. *East's P. C. tit. Murder.* Had these skewers been introduced after death, the appearances would have immediately denoted the fact, and could not be mistaken for the effects of inflammation and gangrene.

Having concluded our dissection, it will be right to preserve those parts, from whose condition or appearance any legitimate deduction can be made. In cases of poisoning, the stomach and intestines should be kept, for we may require them in our subsequent experiments. In the occurrence of eschars, perforations, and gangrenous, or inflamed patches, the anatomist should remove such appearances together with a portion of the surrounding sound parts, and he

should carefully preserve them in alcohol, or in salt and water; and in cases where the state of the uterine system is involved in the inquiry, the uterus and its appendages, should be removed. In the case of *Miss Burns*, the witnesses must have experienced a considerable degree of satisfaction arising from a precaution of this kind, for they were thus enabled to obtain a confirmation of their opinion from the most eminent midwives in London.

After this service has been duly performed, the body must of course be committed to the grave; but should it not have been satisfactorily identified, the head ought to be preserved in spirits, in as natural a state as possible, that it may be recognised by the friends of the deceased. A curious instance stands on record, where this precaution led to the detection of the murderers. *Catherine Hayes*, and two accomplices, *Billings* and *Wood*, murdered the husband of the former, cut off his head, and threw it into a dock near the Horseferry, Westminster. The head was in a few days found, and exposed on a pole in St. Margaret's Church-yard, and afterwards preserved in spirits, by which means the face of the deceased was identified, and the perpetrators of the crime discovered, for which they were executed at Tyburn in the year 1726.

EXAMINATION OF THE SKELETON.

It will appear in the course of the present inquiry, that the anatomist may be called upon to examine a part, or the whole skeleton of a person supposed to have been murdered; and his evidence upon such occasions will be of the greatest importance. Convinced of this fact, we are induced to offer the following observations.

The stature of the human skeleton varies very considerably in different individuals; in the Museum of the College of Surgeons there is a male skeleton, the height of which is eight feet two inches; while we are informed by *Mr. Wilson*,(*a*) that he has seen a perfectly well formed skeleton of an adult person which measured only thirty-five inches; and a dwarf was lately exhibited in London of a still less stature; but in this latter case, the head was disproportionably large. There may have been some individuals a few inches taller, and others a few inches shorter than these, but we have no authentic records of the human stature exceeding nine, or at most, ten feet. The size and dimensions of the human figure, notwithstanding the fables of antiquity,(*b*) appear to have been much the same in all ages of the world. The Egyptian mummies of three thousand years standing,

(*a*) Wilson on the Bones and Joints, p. 110.

(*b*) It was the custom of the ancients to exhibit in the same sculpture in Bas relief, men of very different dimensions, of making kings and conquerors gigantic in stature, while their subjects and vassals were represented as only a fourth or fifth part of their size. This must have given origin to the fable of Giants and Pigmies; while a belief in such tales has been supported by the discovery of gigantic bones, which have through ignorance been received as human remains, but which, as Sir Hans Sloane, in an interesting paper in the Philosophical Transactions (No.404, p. 497,) very truly observes, are nothing more than the bones and teeth of Elephants or Whales: thus, says he, the fore fin of a whale, stripped of its web and skin, was not long since publicly shewn for the bones of a giant's hand. The same explanation applies to those pretended skeletons of Giants of 12, 20, and 30 cubits high, as mentioned by *Philostratus*. The skeleton of 46 cubits which, according to Pliny (*Hist. Nat. Lib.* vii. *c.* 16,) was found in the cavity of a mountain in Crete, upon its overthrow by an earthquake. The skeleton 60 cubits high which *Strabo* (Lib. 17) says was found near Tangis (Tangier) in Mauritania, and supposed to be that of Antæus. To which list may be added the skeleton of Asterius, son of Anactes—10 cubits. That of Orestes, dug up by special command of the Oracle, 7 cubits, &c. &c.

exhibit no difference in stature from the men of our own days; and we read that the Emperor Augustus was considered by the Romans as a person of middle stature, and his height is recorded as that of five feet, nine inches, of our measure.

In our general view of the human skeleton, two important problems present themselves for solution—the *Age*, and *Sex*, of the individual to whom it belonged. The skeleton of the fœtus, with which we shall commence our observations, is capable of furnishing more satisfactory data upon the subject of age than any examination of its softer textures, which are necessarily less evident and regular in their progress of developement. *M. Beclard* has deduced from his examination of above fifty fœtuses, the following calculations, which it may be important to record. After two months have elapsed from the period of conception, the skeleton is about 4 inches and 3 lines in length, that of the spine being 2 inches. At three months, the former is 6 inches, and the proportion of the spine as $2\frac{2}{3}$ to 6. At four months and a half, it is 9 inches, and the spine 4. At six months it is 12 inches, the spine being 5. At seven months and a half, it is 15 inches, the spine $6\frac{1}{3}$. At nine months, or at the period of birth, it is ordinarily from 16 to 20 inches in length; or, at a medium, 18 inches, and the spine is in the proportion of $7\frac{1}{4}$ to 18.

Ossification does not take place with equal rapidity in every bone; the ribs and clavicles are completely converted into bone long before birth, while the bones of the *carpus*, *tarsus*, and more particularly the *patella*, are not completed until some years afterwards; certain parts of bones are not formed until after birth, as the *mastoid processes*, and the pro-

jections of the *frontal sinus*; nor are the *epiphyses* consolidated with the body of the bones, so as to constitute *apophyses*, until many years. With regard to the general developement of the skeleton after birth, it may be observed, that the proportion of cartilage is in an inverse ratio to the age; reckoning from the twentieth year backwards, the younger the subject the larger is its head, compared with the trunk and limbs; the smaller the bones of the face, but the larger the fontanelles; the flatter is the lower part of the face; the larger the chest, in relation to the pelvis; the shorter the limbs; the larger the clavicles; the smoother and flatter the broad bones, but the rounder those that are cylindrical. (*See Albert Durer on the proportions of the bones*, *Lib.* I.) The chemical composition of the bones, in relation to their *phosphate of lime*, and *gelatine*, varies also very materially at different ages. It may be stated that the quantity of the former substance deposited in the texture of bones, is in the direct ratio of the age; the bones of the fœtus are at first entirely gelatinous; at the time of birth, and during the first years of life the organic part superabounds; in youth the quantity of each constituent is nearly equal; in adults the calcareous earth forms almost two-thirds of their substance; and finally, by gradual accumulation in old age, its excess obliterates the organized parts; so that the skeleton of the aged person may be distinctly recognised; besides which, the sutures of the skull are generally lost, and the absorption of the alveolar processes again imparts to the face the physiognomy of the infant.

The male and female skeleton may be said to differ, not only in the whole combination, or in the general impression, from a comparative survey, but also in

the form and properties of the individual parts. The bones of the female are generally smaller, more delicate, and the muscular impressions, and asperities are less distinctly marked on them. The articulations are smaller, and the shaft or body of each cylindrical bone is more slender in comparison with the articular ends; the frontal sinuses are smaller, and the superciliary arches less prominent; all the bones of the face are more slender; the figure of the alveolar circle is more elliptical in both jaws; whereas in the male it is more circular. The differences, however, are in many cases very equivocal, since they may occur in the male as well as in the female skeleton; in the former, where the individual has had a feeble constitution, and never used active exercise; while in the latter, hard labour will frequently confer upon her bony structure the masculine contour which we have described as generally belonging to the male skeleton. The only decisive marks, therefore, by which a female skeleton can at once be distinguished, are to be found in the structure of the pelvis, and arise from the obvious cause of the female possessing a proper frame to become a mother. The pelvis of a female, at and below the *linea innominata*, formed by the lower part of the inside of the *ileum*, and ridge of the *pubes*, is much more capacious, from side to side, than in the male. The entrance or brim of the cavity is also more oval, the greatest diameter being from side to side. In the male it is more triangular, and the greatest diameter at the brim is from the fore to the back part; there is not much difference in the breadth of a male and female pelvis, belonging to individuals of nearly the same height, if measured from the anterior part of the spine of the *ileum* to the corres-

ponding part of the opposite side; the difference in breadth is chiefly confined to the basin-like part of the cavity. The *symphysis pubis* is broader in the female, and the angle underneath it is much more obtuse, the space between the descending rami of the pubes is consequently larger. The *sacrum* is broader, less curved, and turned more backwards; this also adds to the capacity of the cavity. The *os coccygis* is more moveable, and much less bent forwards so that it does not project so much into the pelvis. The *tuberosities* of the *ischia* are farther distant from each other, and from the *os coccygis*; and as these three points are farther asunder, the notches between them are consequently wider, and there is of course a much greater space between the *os coccygis* and *pubes*; and lastly the whole *pelvis* is less massy, but more capacious and shallow in the female structure. (*a*) There are, moreover, some striking peculiarities to be discovered in the structure of the thorax, which if not equally satisfactory with that derived from a comparison of the *pelvis*, deserve serious attention. The whole thorax is shorter in the female, larger above as far as the fourth rib, narrower below; more moveable, less conical; more convex in front; more distant from the *pelvis*, the interval between the last rib, and the *os innominatum* being greater; less prominent anteriorly, so that

(*a*) In a lecture on "Mathematical Beauty," delivered by *Professor Camper* in the Academy of Drawing at Amsterdam, this celebrated physiologist has shewn that in tracing the figures of the body of the male and female in two imaginary ellipses of equal dimensions, a portion of the pelvis of the latter would be out of the ellipse, and her shoulders within it; whereas in the former, the shoulders would project beyond the limits of the figure, and his pelvis, on the contrary, would be entirely enclosed within it.

when the trunk is supine, the *symphysis pubis* is the highest point in the female, whereas in the male subject, the thorax is the most elevated; the sternum is also shorter in the female, ending at the plane of the fourth rib, while it reaches to the plane of the fifth in the male; the clavicles are likewise less strongly curved, so that the *scapulæ* are thrown backwards; the female *scapulæ* are, moreover, smaller, slenderer, flatter, and have acuter angles than those of the male.

We have been thus minute in our endeavour to establish rules for discriminating between the male and female skeleton, because it has been a question of judicial inquiry. The supposed difficulty of ascertaining the sex of a skeleton constituted a principal feature in the celebrated defence of *Eugene Aram* for the murder of *Daniel Clarke*, and which, on account of its extreme ingenuity, has been introduced at length in our *Appendix*, p. 311.

In examining detached and isolated portions of the skeleton, we must take care not to mistake natural fissures and *foramina* for the effects of violence; we have already observed that the *sagittal suture* has been pronounced to be a fracture. But the most extraordinary illustration of such an error that can be adduced, is that presented to us in the history of a case that occurred at Exeter, and which the author of this work is enabled to present in an authentic form through the kind assistance of his friend, *Wm. Tucker, Esq. of Coryton, Devonshire*, a gentleman, who has been too long known, and too universally respected, as an active and upright magistrate, to render any panegyric necessary on the present occasion.

The Case of Thomas Bowerman.

Devonshire.—— *At the Devon Assizes in March*, 1800, *a Bill was preferred before the Grand Jury against* Thomas Bowerman, *for the Murder of* Mary Gollop, *a Bastard Child of* Sarah *his Wife, by another man, previous to her marriage, at the parish of Uffculme, in the said County.*

Mary Gollop lived with her mother, the wife of *Thomas Bowerman*, in *Bowerman's* house, at Uffculme, and had been often noticed on account of the ill treatment she was known to experience from *Thomas Bowerman*. About Michaelmas, 1797, being then about fourteen years of age, she was reported to have died suddenly in her father's house, and she was accordingly buried on the first day of October, 1797, in the church-yard of Uffculme.

In January, 1800, *Thomas Bowerman* was committed to the Devon Bridewell, at the suit of the overseers of the poor of Uffculme, on a conviction for having ran away and left his children chargeable to the parish of Uffculme. His wife was at that time dead, and *Elizabeth*, one of his children, about twelve years old, had been removed to the parish workhouse, and was there maintained at the expense of the parish. *Elizabeth Stark*, the mistress of the workhouse, in a conversation with *Elizabeth Bowerman*, mentioned to her, that on her father's return from Bridewell, after the expiration of his sentence, she would be sent to her father's house to be by him maintained and clothed. *Elizabeth Bowerman* burst into tears, saying she could never again live with her father if he did return, as she was afraid he would murder her as he did her sister. She then stated that her father killed her sister, *Mary Gollop*, by pushing an awl into her head. She saw him do it, and he made her mother and herself wipe up the blood, and said he would serve her the same if ever she told of it.

Mrs. Stark remonstrated with *Elizabeth Bowerman* on the incredibility of her story; but in spite of all admonition, she persisted in asserting the truth of her statements, repeated without variance the particulars of the case, and pointed out the part near the ear where the perforation had been made. On the prevalence of this report, in the month of February, 1800, it was judged expedient by the parishioners to consult the Coroner, who ordered the disinterment of the body of *Mary Gollop*, and held an inquest, by whom the skull was inspected, on which was found a small hole of the size of an awl on the side of the head near the ear, in the place that *Elizabeth Bowerman* had pointed out.

The Jury thereupon returned against *Thomas Bowerman* a verdict of Wilful Murder.

The circumstances of this case excited the attention of the late *Mr. Sheldon*, then living in Exeter. He obtained access to the skull, and on viewing it declared his opinion that the hole in the skull, supposed to have been made by an awl, was a natural perforation, and had not been effected by an awl or any other instrument; and as proofs of his position, he pointed out a small bed or channel leading from the hole, which he said was made by the passage of a vein, and a sort of enamel round the hole, which could not have been there if made by force or art. In further illustration of this truth, he produced a dozen or more human skulls having on them similar perforations variously situated, and each hole having a small channel, and the rim or edge of the hole smooth and polished.

Mr. Sheldon attended the Grand Jury at the said assizes on the investigation of this charge: before whom it is presumed he gave the same testimony. The Grand Jury returned "No Bill" against *Thomas Bowerman* for the murder of *Mary Gollop*.

Another question of forensic interest has arisen upon this subject that requires some notice. Whether

there are not bones in the structures of inferior animals, that so nearly approach those of the human species in figure and appearance as to admit the possibility of their being mistaken for them, by the superficial anatomist? It must be admitted that there does exist a similitude in the skeletons of different animals, of which the common observer cannot derive the least notion from the shape of the parts they sustain, or from the general aspect of their external form. *Bats*, for instance, appear to have wings, but an attentive examination demonstrates that they are real hands, the fingers of which are merely somewhat lengthened; still, however, it is the bones of quadrupeds that can alone be mistaken for those of man, and of these the cylindrical ones are the most likely to mislead us; for example, the *Humerus* varies little in its form, except perhaps in the proportional length of the bone, and the elevation of its spines: the *Ruminantia*, in general, have the *great tuberosity* very high, and the *linea aspera* very prominent. To *Cuvier* we are much indebted for the marks of discrimination by which we may determine to what genus of animal the isolated parts of a skeleton belong; and his researches have changed the opinion regarding the character of many organic remains. Most of the labourers in the Gypsum quarries about Paris are firmly persuaded that the bones which they contain are, in a great part, human remains; but, after having seen and carefully examined many thousands of them, *Cuvier* unequivocally declares that not a single fragment has ever belonged to our species. Another similar discovery has been made by this illustrious anatomist, in the history of the extraneous fossil bones from the island of Cerigo, and deposited by *Spallanzani* at Pavia as human

remains, but of which he affirms there is not one that ever formed a part of the human skeleton; the same *tact*, if we may so express this peculiar merit of *Cuvier*, enabled him to decypher the "*Homo Diluvii Testis*" of *Scheutzer*, and to restore it to its true genus, the *Proteus*.

We shall close our remarks upon the fallacies by which the bones of quadrupeds have been mistaken for those of man, by the interesting account of the remains which were found by *Belzoni* in a sarcophagus in the second pyramid of Egypt, and for a detailed relation of which we are indebted to *Captain Fitzclarence*, in his overland route from India. These bones were believed to be no other than the remains of *King Cephrenes*, who, according to *Herodotus*, is supposed to have built the pyramid, and to have been buried in its cavern; unfortunately, however, for the antiquarian's conjecture, *Mr. Clift*, of the College of Surgeons, has satisfactorily proved that the bones in question are not human, but belong to an animal of the genus *Bos*.

ABORTION AND INFANTICIDE.

Alhough a child *in ventre sa mere* has for certain purposes civil rights from the earliest period of conception, yet it was long undetermined in what rank of crime the killing of a fœtus should be placed. "It was anciently holden, says *Hawkins*, (1 *P. C.* 121) that the causing an abortion, by giving a potion to, or striking a woman big with child, was murder." But at this day it is said to be a great misprision only, and not murder, unless the child be born alive, and die thereof, in which case it seems clearly to be murder, notwithstanding some opinions to the contrary. (*a*) And in this respect the common law (*b*) seems to be agreeable to the *Mosaical*, (*c*) which as to this purpose is thus expressed. "If men strive and hurt a woman with child, so that her fruit depart from her, and yet no mischief follow, he shall surely be punished, according as the woman's husband will lay upon him, and he shall pay as the judges determine; and if any mischief follow, then thou shalt give life for life."

"It seems also agreed, that where one counsels a woman to kill her child when it shall be born, who afterwards does kill it in pursuance of such advice, he

(*a*) *Sir M. Hale* (1 *P. C.* 433) says, it cannot be legally known whether it were killed or not; and adds, "so it is if after such child were born alive and *baptized*, and after dies of the stroke given to the mother, this is not homicide." It is difficult to conceive why the term *baptized* was introduced in this dictum: for whether it were the child of Jew, Turk, or Anabaptist, it is equally entitled to the protection of the law.

(*b*) The Roman Emperor, at a congress held at Constantinople in 692, ordained, that it should be punished with the same rigour as homicide; and severe statutes were enacted against it by *Antonine*, as early as the 161st year of the christian era.

(*c*) *Exodus*, *c.* xxi. A case illustrative of this law occured at Stafford in the year 1811; when a man was executed for the murder of his wife, whose death he occasioned by inducing abortion, through extreme violence, as by elbowing her in bed, rolling over her, &c.

is an accessary to the murder." 1 *Hawk. P. C.* 121, and authorities there cited.

By the old law (*a*) there was this difference between ordinary murder, and the murder of *bastard* children, that in the latter case the *onus probandi* was in some measure thrown upon the supposed criminal, a practice totally at variance with our general principles of justice; and though many fictions and judicial evasions were resorted to for the purpose of softening the extreme rigor of this statute, (*b*) as by supposing that very slight circumstances, as knocking for help when in labour, providing linen, &c. took away the concealment, (*c*) yet the law remained in nominal force till the passing of the stat. 43 *Geo.* 3, *c.* 58, by which it is enacted that trials of women for the murder of bastard children should proceed on the same rules of evidence as trials for murder. (*d*)

(*a*) By the *Stat.* 21 *Jac. c.* 27. If a woman delivered of issue, which being born alive would be a bastard, endeavour by burying, drowning, &c. by herself or others, so as to conceal its death, that it may not appear, whether born alive or not, it is *murder*, unless she prove by one witness at least, that it was born dead. *Ba. Abr. tit. Bastard.*

(*b*) We are strongly inclined to believe the assertion, that where the severity of a statute is excessive, judges, juries, and prosecutors, enter into a league to defeat its rigor.

(*c*) The law of Scotland was yet more severe; the mere fact of concealing the pregnancy, whether the death of the child were proved or not, was a capital felony. See 1 *Hume's Com.* 287, and 1 *Burnet's Crim. Law*, tit. *Child-murder*, and many cases there cited The child of *Margaret Dickson*, to whose case we have alluded, *vol.* ii, *p.* 91, was legitimate.

(*d*) III. " And whereas doubts have been entertained respecting the true " sense and meaning of a certain Act of Parliament made in England, in " the twenty-first year of the reign of his late Majesty King *James* the first, " intituled, *an act to prevent the destroying and murthering of bastard children*, and " also of a certain Act of Parliament, made in Ireland in the sixth year of " the reign of her late Majesty Queen *Anne*, intituled, *an act to prevent* " *the destroying and murthering of bastard children;* and the same have been " found in sundry cases, difficult and inconvenient to be put in prac-

This part of our subject, therefore, might have been considered under the general head of murder; but though the legal distinctions which marked the crime of infanticide are thus removed, there are yet so many peculiarities in the physiological mode of collecting the evidence of its commission, that we have reserved it for separate consideration, in conjunction with the offence of procuring abortion to which it bears a close affinity.

The case of the *King* v. *Phillips*, *3 Campb. R. p. 73*, appears to have been the first that was tried under the new law.

This was an indictment on the 2d sect. of *Lord Ellenborough's* act, *43 Geo. 3, c. 58*, for administering *savin* to a woman *not* quick with child, for the purpose of procuring abortion. (*a*)

" tice ;" for remedy whereof, be it enacted by the authority aforesaid, that, from and after the first day of July in the year of our Lord one thousand eight hundred and three, the said two several acts, and every thing therein contained, shall be, and the same are hereby repealed; and that, from and after the said first day of July, in the said year of our Lord one thousand eight hundred and three, the trials in England and Ireland respectively of women charged with the murder of any issue of their bodies, male or female, which being born alive would by law be bastard, shall proceed and be governed by such and the like rules of evidence and of presumption as are by law used and allowed to take place in respect to other trials for murder, and as if the said two several acts had never been made.

IV. Provided always, and be it enacted, that it shall and may be lawful for the jury by whose verdict any prisoner charged with such murder as aforesaid shall be acquitted, to find, in case it shall so appear in evidence, that the prisoner was delivered of issue of her body, male or female, which, if born alive, would have been bastard, and that she did, by secret burying, or otherwise, endeavour to conceal the birth thereof, and thereupon it shall be lawful for the court before which such prisoner shall have been tried, to adjudge that the prisoner shall be committed to the common gaol, or house of correction, for any time not exceeding two years.

(*a*) The act provides that if any person or persons shall wilfully and

The first count of the indictment charged that the prisoner on the 10th day of January 1811, and on divers other days and times between that day and the 20th of March in the year aforesaid, at the parish of St. Mary's in the county of Monmouth, wilfully, maliciously, unlawfully and feloniously did administer to and cause to be administered to and taken by one *Hannah Mary Goldsmith*, single woman, divers large quantities, that is to say, 6 ounces of the *decoction* of a certain shrub called *savin*, then and there being a noxious and destructive thing, the said *H. M. G.* on the said 10th day of January in the year aforesaid, and continually from thence until the said 20th day of March in the year aforesaid, at &c. aforesaid, being with child, but not quick with child, to wit, at the respective times of administering such divers large quantities of the *decoction* of the said shrub called *savin* as aforesaid, with intent thereby to cause and procure the miscarriage of the said *H. M. G.*, against the form of the statute, &c.

It appeared that the prisoner prepared the medicine which he administered to Miss *Goldsmith* by pouring boiling water on the leaves of a shrub: and the me-

maliciously administer to, or cause to be administered to or taken by any woman any medicines, drug or other substance or thing whatsoever, *or shall use or employ or cause or procure to be used or employed, any instrument or other means whatsoever* with intent thereby to cause or procure the miscarriage of any woman not being or not being proved to be quick with child at the time of administering such things, or using such means, that then and in every such case, the person or persons so offending, their counsellors, aiders, and abettors, knowing of and privy to such offence, shall be and are hereby declared to be guilty of felony, and shall be liable to be fined, imprisoned, set in and upon the pillory, publicly or privately whipped, or to suffer one or more of the said punishments, or to be transported beyond the seas for any term not exceeding fourteen years, at the discretion of the court before which such offender shall be tried and convicted.

dical men examined, stated that such a preparation is called *an infusion* not *a decoction*,—which is made by boiling the substance in the water.

The prisoner's counsel insisted that he was entitled to an acquittal on the ground that the medicine was misdescribed.

Lawrence, J. This objection will not hold. The infusion and decoction are *ejusdem generis*, and the variance is immaterial. The question is, whether the prisoner administered any matter or thing to this woman with intent to procure abortion.

Witnesses were called for the prisoner to prove that the shrub he used was not *savin.*

The counsel for the prosecution, insisted, that even in that case the prisoner might be found guilty upon the last count of the indictment, which charged that he administered a large quantity "of a certain mixture to the jurors unknown, *then and there being a noxious and destructive thing.*

The prisoner's counsel objected that unless the shrub was *savin*, there was no evidence that the mixture was "noxious and destructive."

Lawrence, J. In an indictment on this clause of the statute, it was improper to introduce these words; and although they are introduced, there is no necessity to prove them. It is immaterial whether the shrub was *savin* or not, or whether or not it was capable of procuring abortion, (*a*) or even whether the woman was actually with child. If the prisoner believed at the

(*a*) At the Chelmsford Assizes. Aug 1820, *Robin Collins* was indicted for administering steel filings and penny-royal water to a woman, with the intent to procure abortion. *Mr. Baron Wood* told the jury, in point of law, that if they were satisfied that the prisoner had administered the drugs with intent to procure miscarriage, though they were incapable of producing such effect, and though the young woman had willingly *consented* to take them, the case was within the statute, and they were

time that it would procure abortion, and administered it with that intent, the case is within the statute, and he is guilty of the offence laid to his charge.

The prisoner urged that he had given the young woman an innocent draught for the purpose of amusing her, as she had threatened to destroy herself, unless enabled to conceal her shame; and the Jury returned a verdict of *not guilty*.

The prisoner had been previously tried on the *first* section of the statute (*a*) for the capital charge, in administering savin to Miss *Goldsmith* to procure abortion, she being then quick with child. (*b*) In point of fact, she was in the fourth month of her pregnancy. She swore, however, that she had not felt the child move within her before taking the medicine, and that she was not then quick with child. The medical men in their examinations, differed as to the time when the fœtus may be stated to be quick, and to have a distinct existence; but they all agreed that in common understanding, a woman is not considered to be quick with child till she has herself felt the child alive and quick within her, which happens with different

bound to find the prisoner guilty. The jury immediately found the prisoner guilty. The learned judge expressed himself perfectly satisfied with the verdict, and animadverted in strong terms on the enormity and cruelty of the prisoner's crime; public example required the severest visitation of punishment that the law authorised, in order to warn others against committing a similar crime, which unhappily was too prevalent. The sentence of the Court was that the prisoner should be transported for the term of fourteen years.

(*a*) Whereby it is enacted that "if any person shall wilfully, maliciously and unlawfully administer to, or cause to be administered to or taken by any of His Majesty's subjects, any deadly poison or other noxious and destructive substance or thing, with intent thereby to cause and procure the miscarriage of any woman *then being quick with child*, the offender shall suffer death as in cases of felony without benefit of clergy."

(*b*) By the law of most countries this crime is punished with more severity if committed after the *quickening* of the child, than before. The Roman Penal Code made the same distinction. By the decretals of the canon law (*p.* ii, *causs.* 32, *p.* ii, *c.* 8), "*Non est homicida, quæ abortum procurat, antequam anima corporis sit infusa.*"

women in different stages of pregnancy, although most usually about the sixteenth or eighteenth week after conception.

Lawrence, J. said, this was the interpretation that must be put upon the words *quick with child* in the statute; and as the woman in this case had not felt the child alive within her before taking the medicine, —he directed an acquittal.

It cannot be necessary here to repeat that the popular idea of quick or not quick with child is founded in error; (*a*) yet as Acts of Parliament are not often drawn, and seldom even reviewed previous to their passing, by those whose profession, science, trade, or business, would best enable them to convey their meaning with distinctness; and as penal statutes must be construed strictly, and according to the ordinary and obvious meaning of the words, we must be content to recognise a distinction in law which does not exist in nature. There is, however, another peculiarity in the two sections which are founded on this distinction of *quick* or *not quick*, which calls for immediate attention; in the first of these, that which applies to women quick with child, and in which the offence is made a capital felony, there is no mention of *using any instrument or other means whatever*, but the crime is confined to *administering* any deadly poison, or other noxious and destructive substance or thing; while in the clause against the minor offence the use of *instruments or other means whatsoever* is expressly included. Now we shall have occasion hereafter to show that medicines internally administered can seldom produce abortion, but that the effect can be infallibly secured by instruments; the most probable

(*a*) On this subject see "Physiological Illustrations of Utero-gestation, vol. i, p. 239.

mode therefore of committing the crime appears to be protected by the most penal clause..

A case (*a*) on this point is inserted in the *Edinburgh Medical Journal* for April, 1810; we entirely concur in the sentiment of the editors; "we cannot," they say, "avoid remarking the apparent inconsist-

(*a*) *Wm. Pizzy* and *Mary Codd* were tried at *Bury St. Edmonds*, Aug. 11, 1808, for feloniously administering a certain noxious and destructive substance to *Ann Cheney*, with intent to produce a miscarriage. The trial, taken in short hand by *Wm. Notcutt*, was published at *Ipswich* in 1808; but we have not been able to procnre a copy; we must therefore content ourselves with observing, on the authority of the *Med. Journ.* that the Counsel for the prisoners objected to receiving that part of the evidence which related to *Pizzy's* manual operations upon *Ann Cheney*, as not relevant to the administration of the medicines which alone constituted the capital crime; the objection was over-ruled by the court, and the evidence was admitted for the purpose of proving the *intention* with which the medicines were administered. The examination of *Ann Cheney* before the magistrates was as follows:

"Saith that she is about the age of 27 years; that she has lived as servant with *Mr. Simon Codd*, of Haughley, about 12 years last past; that she is an unmarried woman, and was so in the month of February 1806. That in the said month of February 1806, she was delivered of a female bastard child; that she was alone when she was delivered, but that she called out for assistance, but no one came for some minutes; the child was born dead; she never saw it move, or heard it make a noise. That soon after she found herself with child, she acknowledged it to her mistress, *Codd*, and told her who was the father of the child. Her mistress said, if she would take that which she would get for her, she thought she could order it better than letting any body know it. Soon after that, she saw *Mr. Pizzy* of Middlesham, the farrier; she told him what was the matter with her; he then gave her some more medicines, and told her they were to make her miscarry. They had not that effect; that she continued to take medicines from him during her whole remaining time of pregnancy; she sometimes received them from her mistress, and sometimes from *Pizzy*; that her mistress knew what they were for, because she (her mistress) had told her what they were for; that the medicines did not answer the intended purpose; that about a week or ten days before she was delivered, *Mr. Pizzy* came, and upon her informing him that his medicines had not answered the purpose, he

ency of the law of England, in having no statute to punish its actual perpetration by the only certain means of effecting it, while it punishes by death, without benefit of clergy, the attempting it by means which are very seldom effectual. Thus *Pizzy* was tried for attempting to cause *Ann Cheney* to abort, by giving her medicines, which had no effect; and his having actually perpetrated the crime by mechanical violence, was only brought forward as proving the intention with which the medicines were given." (*b*) The act therefore requires amendment, framed however with such care, that the necessary practice of procuring premature labour by qualified practitioners may be defended, while the immoral and criminal use of instrumental abortion may be adequately punished.

said she must go up stairs with him, which she did; they were alone; he laid her on the floor, on a great coat, upon her back; she put the coat over her head, so that she could not see; she then felt him put some instrument up into her body, which was very cold, like iron; but she did not see it; that, in consequence, she lost some blood, not very much nor very little—suppose about half a pint; did not feel much pain. *Pizzy* told her it was for the purpose of making her miscarry. Her mistress was at home, and knew for what purpose they went up stairs, but was not present. *Pizzy* came again the day before she was brought to bed. Examinant told him she had not miscarried; he then said he must try something further; her mistress was present, and heard this. *Pizzy* and examinant went up stairs again, but her mistress was not present. *Pizzy* laid her down, as he did before, on her back, and passed his hand three times up into her body half way of his arm, which was naked, which gave her a great deal of pain; and this examinant felt herself very wet, and never felt the child move afterwards. Examinant thinks she had not gone her time by six or seven weeks. She felt the child move after she was so first treated by *Pizzy*, and till within a day or two before the second time. She thinks she did not go her full time, from the treatment she received from *Pizzy*."

(*a*) It is said that a surgeon and midwife have been since tried for this crime before the Supreme Court of Justiciary, and sentenced to fourteen years transportation. *Ibid.*

PHYSIOLOGICAL ILLUSTRATIONS.

Abortion.

Abortion (*a*) may be procured by the administration of powerful medicines, or by the application of mechanical violence, such as blows, or pressure on the abdomen; or by the introduction of sharp instruments into the uterus, so as to rupture the membranes. We shall offer a few remarks upon each of these several modes of accomplishing the criminal object in question. From a very early period attempts have been made to devise means of procuring abortion by the administration of certain drugs, which were considered as capable of acting specifically upon the womb, and of occasioning the exclusion of its contents. It would be idle to enumerate the various substances which have, at different times, been employed for such a purpose, not a few of which were derived from the fertile sources of credulity and superstition; and yet we are bound to admit, that upon this occasion at least, credulity has proved a blessing to mankind, by suggesting the substitution of a harmless amulet, or an inefficacious drug, for an application of extreme violence and danger, and, perhaps of death. The physicians of the present age disclaim the existence of any specific class of *abortives*, but we

(*a*) Abortio—Abortus, formed of *ab* from, and *orior* to be born. Among the ancient physicians the term *Abactus* or *Abigeatus*, was used for a miscarriage procured by art, or force of medicines, in contradistinction to *Abortus*, which is natural. But the moderns acknowledge no such distinction.

are ready to admit that the administration of violent medicines, by involving the uterus in the general shock thus given to the system, will occasion abortion, provided there exist at the same time, a certain predisposition on the part of the female; should this latter condition, however, be wanting, the *poculum abortionis* may, by the violence of its operation, destroy the life of the unhappy mother, or very materially injure her, without accomplishing the object for which it was administered. In the case of *Mrs. Robert Turner*, one of the persons poisoned by *Elizabeth Fenning*, notwithstanding the long and violent sufferings she had experienced during her pregnancy, brought forth a living child at the natural period. On the other hand, a grocer's wife in Edinburgh, having swallowed by mistake a handful of nitre, suffered abortion in less than half an hour; and in the case of *Mrs. Atwood*, of Mitcham, who with the rest of her family was poisoned by mushrooms, as already related, (*vol.* ii, *p.* 431) although rescued from death, miscarried in consequence of the violence which her general system had sustained.

The medicines more particularly employed for procuring abortion are *savine*, (*a*) and other irritating drugs, especially those which tend to excite a considerable degree of vascular action; such medicines, likewise, as exert a violent action on the stomach, or bowels, will be likely to produce miscarriage, and are often taken for such purpose in quantities sufficient to produce fatal results. *Mr. Burns* observes that it is an old remark that those purgatives which occasion much tenesmus, will be more likely to excite the expulsion of the ovum. The strong cathartics,

(*a*) See our history of the Juniperus Sabina, vol. ii, p. 578.

however, which are sometimes taken to promote such an effect, not only act by exciting tenesmus, but likewise by inflaming the stomach and bowels, and thus affect the uterus in two ways. It cannot be too generally known, adds the last mentioned author, that when these medicines do produce abortion the mother will seldom survive their effect. It is a mistaken notion that abortion can be more readily excited by drastic purges, immediately after the woman discovers herself pregnant; on the contrary, the action of the uterus is then more independent of that of the other organs, and is therefore not so easily injured by changes in their condition. Upon the same principle that violent cathartics or emetics operate upon the pregnant uterus, any other sudden shock upon the body will occasion a similar effect on that organ; the extraction of a tooth, for example, has been known to produce abortion. A thunder-storm, or violent cannonade, has been supposed to occasion the same result by the concussion of the air; but *Mr. Burns* considers it more probable that such an effect is owing to mental trepidation. The influence of the passions upon these occasions, such as fear and joy, especially if suddenly produced, is too well known to require a comment, and it has been too often artfully excited for criminal purposes. The same observation will apply to other violent impressions upon the body, such as that occasioned by rapid and uneasy travelling, dancing, (*a*) walking, &c. Blood-letting also, if carried to any extent, will be liable to occasion

(*a*) It is a curious circumstance, that, although *Hippocrates* prohibited physicians from assissting in procuring abortion, he relates the case of a young woman whom he had recommended to dance, and use other violent exercise, for that purpose, in whom it produced the effect, and without materially injuring the woman.

miscarriage. *Belloc* relates a case in which these means were criminally used for such a purpose; the woman was bled by a medical practitioner, when, after his departure, the bandage was removed, and a farther quantity of blood taken. But all the modes above related were soon discovered not only to be highly dangerous to the woman, but extremely precarious in their results; and hence a practice appears to have early originated of ensuring the exclusion of the ovum by the more direct and certain method of introducing a stillet, or some sharp-pointed instrument into the uterus; an allusion to an instrument of this kind was made on the trial of *Charles Angus* (*vol.* ii, p. 177) and was described as a *silver tube with a slide, at the end of which was a dart with three points.* *Ovid* (*a*) appears to allude to this operation in the following passage.

———" sine crescere nata.
Est pretium parvæ non leve vita moræ.
Vestra quid effoditis subjectis viscera telis;
Et nondum natis dira venena datis." ?

The practice is also reprobated by *Tertullian*, (*b*) who has described the instrument with which the operation of penetrating the ovular membranes was performed, " *est etiam æneum spiculum quo jugulatio ipsa dirigitur, cæco latrocinio ἐμβρυοσφαλὴν appellant, utique viventis infantis peremptorium.*

It is hardly necessary to remark that such an operation, unless performed by a skilful surgeon, will be very liable so endanger the life of the female. *Guy Patin* relates the case of a midwife who was hanged at Paris for occasioning the death of a lady in that

(*a*) Amor. l. 2, eleg. 14.
(*b*) Tertull. de Anima, apud oper. p. 323, ed *Rigalt.*

city, by an attempt to procure abortion by this method. On her trial she said she had frequently practised it with success; but, in this case it seems, the instrument had pierced the body of the uterus, instead of passing through the os internum. We have already noticed a parallel case which occurred at Durham, see *page* 72.

In cases of criminal abortion the medical practitioner may be called upon to deliver an opinion upon the circumstances of the case. The data from which he is to draw his conclusions have been already fully investigated in different parts of this work. We must therefore refer the reader to the Physiological Illustrations of Conception and Parturition, *vol.* i, *p.* 230, and to our directions for conducting the dissection of the uterus, *vol.* iii, *p.* 67, for the solution of the different problems to which the consideration of the subject may give origin.

INFANTICIDE.

In cases of alleged infanticide, the evidence of the orensic physician is of the highest importance, and as his opinion upon such an occasion must necessarily go far to influence the judgment, and direct the verdict of the jury, he should be fully prepared to appreciate the difficulties of the case, and to clear away the numerous fallacies, and popular prejudices with which the subject is embarrassed. To *Dr. William Hunter*, the profession and the public owe the deepest obligation, for the philosophical and humane manner in which he examined the general value of physiological testimony in proof of the commission of child-murder. Previous to this enlightened dissertation (*a*) it is to be greatly feared that many unfortunate women had fallen the innocent victims of false theory and prejudice. The objections, however, so forcibly urged by *Dr. Hunter* against the validity of certain physiological tests, although well calculated to awaken inquiry, in order to divest such evidence of its fallacy, were not intended, as some have imagined, to discard physiological testimony altogether. With this conviction, we shall proceed to a critical examination of the various proofs which physiology has been supposed capable of affording, in support of an accusation of infanticide.

(*a*) On the uncertainty of the signs of murder in the case of Bastard Children. Read before the London Medical Society, and published in the sixth volume of "Medical Observations and Inquiries."

The objects of this inquiry may be conveniently arranged under four divisions, viz.

1. *To ascertain whether the child was born alive?*
2. *If born alive, whether its death was the result of natural causes; of wilful murder; or of negligence and abandonment?*
3. *If its death arose from the want of due care, whether such negligence should be regarded as criminal or accidental?*
4. *Whether the woman accused presents on examination, such appearances as correspond with her supposed relations to the child?*

Upon each of these heads we shall offer such observations as appear to us to be essential to ensure the safe judgment of the practitioner. Several of the questions, involved in the inquiry, have already engaged our attention in the first volume of the present work, under the history of conception; while the industry with which the numerous authorities on the subject of infanticide, and its scientific relations, have been lately collated by *Dr. Hutchinson*, (*a*) in England, and *Professor Capuron*, in France, will justify us in giving to this branch of our work the character of a commentary, rather than that of a regular history.

On the discovery of the body of a newly-born infant, it becomes our first duty to ascertain whether the spark of life be entirely extinct; if the sensible proofs of absolute death should be absent, no time is

(*a*) A dissertation on Infanticide, in its relations to Physiology and Jurisprudence, by *W. Hutchinson*, M.D. Edit. 2, London 1821.

to be lost in subjecting it to those means (*a*) which are best calculated to excite it to vigorous life, such as external warmth, frictions, inflation of the lungs, &c.

Having satisfied ourselves that the child is dead, we are to proceed to such inquiries, as may enable us to furnish the best possible evidence on the case, in a court of judicature, viz.

1. *To ascertain whether the Child was born alive?*

In the absence of all direct testimony, our investigation is to be conducted upon principles very similar to those which we have already recommended in those obscure cases of death in which "the person is found dead, and the history of his dissolution is unknown." See *vol.* iii, *p.* 2. The appearances of the corpse—the character of the spot in which it was found—the report of competent witnesses—and the phenomena displayed on dissection, are, in both cases, the circumstances from which we are to elicit data for the solution of our difficult problem.

A. *The inspection of the body of the infant.* By this we are first to learn, whether it had arrived at that degree of maturity which is essential for enabling it to sustain an independent existence—"*etoit il viable?*" (*b*) If it can be fairly shewn that the child had not reached the end of the seventh month of uterine gestation, the charge of infanticide ought to be with-

(*a*) See our chapter on the methods of treating Asphyxia, vol. ii, p. 75.

(*b*) We have no word in the English language so expressive as *viable*. That adopted by Dr. *Gordon Smith*, *rearable*, is a very clumsy substitute. The subject has been very fully discussed by *Professor Capuron*, to whose most excellent work, entitled "La Medecine Legale, relative a l' Art des Accouchemens," we must refer the reader.

drawn, although we are well aware that various opinions might be cited in support of a contrary position. (See *Physiological Illustrations, vol.* i, *p.* 243.) The weight of the child is a circumstance which should always be ascertained, as being capable of throwing some light on the question at issue. If the fœtus has passed the period of seven months, it will generally weigh four pounds, although upon this point again a difference of opinion has unfortunately existed. (*a*)

The length of the fœtus, at the full term, is said to vary less than its weight. It is generally from

(*a*) Dr. *Hutchinson* states that the weight of the fœtus at the full term of utero-gestation has generally been rated too high; apparently from this having been stated from conjecture, rather than from the evidence of the balance.

It appears from the observations of *Dr. Hunter*, made at the British Lying-in hospital, on the bodies of several thousand new-born and perfect children, that the weight of the smallest was about *four pounds;* and of the largest *eleven pounds two ounces*; that of by far the greater proportion was from *five to eight pounds*. *Dr. Clarke's* inquiries furnished nearly similar results; he found that the average weight of male children was *seven pounds five ounces and seven drachms;* and that of female, *six pounds eleven ounces and six drachms*, (Phil. Trans. vol. lxxiv.) *Dr. Clark*, of Dublin, found it vary from *four* to *eleven pounds*. *Dr. Merriman* states, in his lectures, that he delivered one which weighed *fourteen pounds*, (it was born dead,) and *Dr. Croft* delivered one alive weighing *fifteen pounds*. It is somewhat less in France than in England; of fifteen hundred and forty-one examined by *Camus*, under circumstances similar to the foregoing, the greatest weight was *nine pounds*, and of this there were sixteen instances; the ordinary, from *five* to *seven*; and the average *six pounds and about a quarter;* there were thirty-one instances in which it was as low as *three pounds*, although *Baudelocque* states that he saw several instances in which the weight was about *ten pounds*, a few where it was *twelve*, and one of *thirteen*. Subsequent observations on twenty thousand children at the Hospice de la Maternité, at Paris, have shewn a few instances where it has been *one hundred and sixty-eight ounces*, that is *ten pounds and a half*, which has been the highest term. In Germany it appears to be nearly the same as in France; for *Roederer* states the average weight to be from *five pounds* to *six pounds and a half.*—*Hutchinson, L. C.*

nineteen to twenty-two inches. Seventeen and twenty-six will include the two extremes. *Professor Chaussier* has presented us with a scale of relative admeasurements, from which he thinks we may deduce the age of a child. He asserts that at the full term of gestation, the middle of the body of the fœtus corresponds exactly with the umbicus; at the eighth month it is two or three centimeters higher; that it approaches still nearer the sternum at the seventh month; and at the sixth falls exactly at the abdominal extremity of that bone. (*a*) If this statement is to be relied upon, we should be able to conclude, says *Dr. Smith*, that when the middle of the length of the body falls at the cartilago ensiformis, the fœtus must be under the seventh month, and consequently could not have continued to live after birth.

The surface of the fœtus will moreover present an appearance, arising from its great vascularity, which is very characteristic of its immaturity; the red hue, however, to which we more particularly allude, is not acquired until the vessels have attained a certain capacity, and the circulation a considerable degree of vigour; and it is worthy of remark that the appearance becomes again obscure, as the developement of the fœtus advances, from the increasing opacity of the integuments, but in those parts where the deposition of fat in the cellular membrane is wanting, the redness will remain conspicuous, as in the palms of the hands, or in the soles of the feet. The head still maintains an unjust proportion to the rest of the body; the bones of which it consists are extremely soft and yielding; and, on account of the extent of

(*a*) We have already given a scale of the dimensions of the skeleton of the fœtus, according to the accurate observations of *M. Beclard*, vol. iii, p. 75.

the fontanelles, the connection between them is extremely imperfect. The eye-lids are closed; the hair on the eye-brows and the eye-lashes but thinly scattered; the pupil is generally closed by a membrane; the nails are wanting, or scarcely apparent. The sexual organs will also afford some characteristic appearances. In the male, the testes, between the sixth and eighth month are in progress towards the scrotum; at the end of the seventh they are not yet found there. The scrotum is generally of a bright red colour. In females the vulva is projecting, and the labia separated by the protuberance of the clitoris.

The general external appearance of a fœtus may, moreover, indicate the important fact of its having been retained in the uterus after its death. *Lecieux* observes that the ordinary term which it remains in the womb, in this state, is from five to twenty days; and that, according to the length of this period, the body will have lost more or less of its consistence and firmness; the limbs become lax, and the muscles are readily torn; the epidermis may be removed by the slightest friction; the skin also assumes a purplish, or brownish-red colour; there is often some bloody serum effused in the cellular tissue, just beneath the skin, especially about the cranium; (*a*) the umbilical cord is large in circumference, soft, infiltrated with serum, livid, and is very readily torn; the thorax is flattened, the head falls into different shapes, and becomes flattened from its own weight; the membranes which serve as a bond of union to the several bones of the cranium, are much relaxed. The brain is in a nearly fluid state, and emits a fetid odour.

We should next proceed to a more minute and particular inspection of the external appearances; for

(*a*) See *Dr. Merriman* on difficult parturition, p. 51.

which purpose the body should be cleansed from the dirt and impurities with which it may be invested, taking care to notice upon this occasion, whether the surface be covered with that sebaceous matter usually present on the skin of newly-born infants, and whether any mud or other matter, capable of stopping the mouth and nostrils be found about them. The head should also be shaved, in order that the fontanelles and sutures may be carefully examined with a view to ascertain whether any injury had been committed on the brain through these avenues. A midwife was executed at Paris for having introduced fine and sharp wires into these parts, before the heads of the unfortunate infants were expelled from the vagina, and consequently before respiration could have taken place. Every appearance of ecchymosis, or wound, should be inspected with attention, in order that its true character may be verified; and upon this occasion it will be important to bear in mind that on the surface of dead bodies, especially on those parts on which they have lain, superficial livid marks, arising from stagnation of blood in the small vessels of the skin will very generally present themselves, and which have received the name of *sugillations*, in contradistinction to that of *ecchymoses*, which are produced during the life of the individual. As the people, observes *Dr. Hutchinson*, are apt to regard the former of these discolourations as signs of violence, and as such propositions have even been maintained in courts of judicature, it is highly essential to obviate the possibility of litigation on this point, by removing a layer of the skin where such lividness is present, to shew that it is confined to this organ, and is not attended with infiltration of blood in the cellular tissue.

The appearance of wounds inflicted during life will vary according to the length of time the subject has survived. If death takes place immediately, they will present red and bloody surfaces, with ecchymosis. Should life have lingered for some hours, their edges will be somewhat tumid and retracted, and the surrounding skin will display a reddish appearance; clots of blood may also exist in them, and these will be found to adhere to their surfaces. In those cases in which several days elapse before death, they may appear bedewed with purulent matter. *Dr. Hutchinson* very justly remarks that wounds, made when the circulation has ceased, and the body become cold; and when the blood has coagulated in the vessels, and the muscles have become rigid, may be known to have been inflicted after death by the pallid appearance of their surfaces, and by the total absence of tumefaction and retraction; such wounds, moreover, never contain any adherent clots of blood, and there is no surrounding ecchymosis. These characters may not perhaps be quite so distinct, where the violence has been effected immediately after death, while the body is still warm, the blood fluid, and the muscles endowed with contractility; yet in this latter case there will neither appear tumefaction, nor ecchymosis; and the blood, which may have oozed from the divided surfaces, will remain fluid, or form clots not adherent to them.

Contusions, effected during life, are always accompanied with more or less of ecchymosis; and, if produced by severe external violence, the skin will necessarily be involved in the injury. When ecchymosis is superficial, and the subject outlives its course, its progress and decline present highly characteristic phenomena; at first the injured surface presents a

spot of a red, or bluish colour; this spot which is formed by the blood infiltrated into the cellular tissue, soon assumes a deep livid, or leaden hue; it then after a few days becomes, successively, violet, yellowish, and terminates by a pale citron colour. It is generally seven or eight days before it disappears. These characters will always enable the anatomist to distinguish contusions made during life, from those occurring after death.

The state of the cervical vertebræ should also be carefully examined, for the death of the infant may have been occasioned by a fatal luxation, produced perhaps by some sudden contortion of the neck. Any marks of pressure, or violence about this part should therefore be carefully noted; and it will be obviously more convenient to examine the spine, before the large cavities of the bodies are exposed; and which may be accomplished in the following manner. After dissecting the soft parts from the vertebræ, the dorsal parts may be readily removed by scissars, while the apophyses of the true vertebræ can be very easily cut through. The practitioner will thus be enabled to estimate the nature and extent of any wound, or laceration, or effusion of blood, that may be discovered in connection with the spinal marrow. The appearance and condition of the umbilical cord should also be examined before any of the great cavities are laid open; for it is obvious where a ligature has not been properly applied to it, death may have arisen as the result of hemorrhage from this part. Other reasons also exist which render such an inspection of the greatest importance.

Phœnomena displayed on the dissection of the internal parts.

The ample directions which have been already offered upon this subject, (*vol.* iii, *p.* 45) will in a great degree supersede the necessity of very minute details on the present occasion. There are, however, some few phenomena that exclusively relate to the evidence of infanticide, and must accordingly receive a due share of our attention. Certain peculiarities, moreover, exist in the mode of conducting the dissection of an infant, which demand some explanation.

Cavities of the mouth, œsophagus, larynx, and trachea.

It will be adviseable to commence our incision through the integuments, from the under lip to the top of the sternum, passing quite through the former part; another incision is to follow the inferior margin of the lower jaw; then the triangular portions thus marked out are to be separated from the parts beneath; the head should be bent back in order to put the soft parts that are to come under the knife upon the stretch. The jaw may now be divided at its symphysis, so as to separate it into two lateral portions, which may be turned aside by dividing with a scalpel all the parts which adhere to its internal surface. The object of this arrangement is to bring into view the cavities of the mouth, œsophagus, larynx, and trachea, the condition of which is so frequently connected with the death of the child that they ought never to escape examination. The position of the tongue should be noticed, and the contents of the mouth, if any, ought to be recorded, for cases have occurred in which extraneous matters,

such as mud, sand, feathers, &c. have been accidentally, or criminally introduced. It will at the same time be extremely proper to ascertain the state of the nasal cavities, and to observe the quantity and consistence of the mucus in these parts, as well as in the fauces. The tongue may now be gradually pulled downwards, until the isthmus of the fauces is stretched, when, by cutting through the arch of the palate, the whole of the pharynx will be exposed; the dissection should then be extended in order to bring the commencement of the œsophagus into view, which should be carefully examined. The position of the epiglottis is the next object of inspection; and lastly, the interior of the larynx and trachea may be disclosed by making an incision through the thyroid, crycoid, and tracheal cartilages, at their anterior parts. Ligatures should be placed on the lower parts of the œsophagus and trachea.

Thoracic cavity. Having accomplished the examination above described, we may proceed to expose the cavities of the thorax and abdomen, in the manner already explained, (*vol.* iii, *p.* 52) remembering always that, by carelessly wounding the thoracic viscera, we shall, in a great degree, defeat the objects of the dissection; on this account it will be advisable to make the division of the ribs with scissars, instead of a scalpel. From the examination of these cavities we shall, in the first place, derive a confirmation, or refutation, of the opinion respecting the maturity, or *viabilité* of the subject, which the external view of the body had suggested. Previous to the end of the seventh month the heart will be found exceeding in size its just proportions, and without much difference of capacity between the auricles and ventricles. The lungs will appear small, solid, and retracted

from the anterior part of the cavity. In the abdomen we shall find the liver very considerable in size, and situated near the umbilicus, from which it afterwards gradually recedes as the fœtus advances. The gall-bladder will be found to contain a nearly colourless serous fluid, which during the eighth month gradually becomes yellowish, and acquires a bitter taste. If the appearances above described be compared with those which are displayed on the dissection of a full grown fœtus, we shall be able to form a very just estimate of the value of an anatomical investigation, in discovering the term of its intra-uterine or fœtal life. But, by the inspection of the thoracic organs, we endeavour to derive an inference still more important; the state of the lungs is supposed to be capable of indicating whether respiration have ever been performed; and, consequently, whether the child was born alive. It is affirmed that the lungs of the fœtus are small, not filling the cavities of the chest, or covering the pericardium; dense; compact; of a deep-red, or chocolate colour, not unlike that of the liver; carrying but little blood, and having a specific gravity exceeding that of fresh water, and, consequently, *sinking* in that fluid. Upon cutting into them no air will be emitted, nor will any blood follow the incision. When, however, respiration has been established, these organs become more voluminous, present a yielding elastic texture, and assume a florid-red colour; they, moreover, contain and transmit a larger quantity of blood, and have a specific gravity less than that of fresh water, and accordingly *float* in it. On cutting into the lungs, under these circumstances, the air contained in their cells will escape, and produce a peculiar crackling noise, which has been well expressed by the term

crepitating; a bloody fluid will at the same time exude.

That a change in the character of the pulmonary structure so important as that just described should have attracted the notice of the physiologist, and been eagerly seized, as evidence in proof of the infant *having respired*, and therefore been *born alive*, cannot be a matter of surprise; and we accordingly find that the *hydrostatic test* long enjoyed the unreserved confidence of the profession and the public. Whenever an infant was found dead, under circumstances of doubt and suspicion, its lungs were removed from the body, and immersed in water; if they sank, the subject of the experiment was immediately declared to have been still-born. If, on the contrary, they floated, it was concluded without farther enquiry, that the infant had lived after its birth. The aphorism of *Baglivi* may be received as an expression of the general feeling so long entertained upon this subject. "*Pulmones fœtus mortui in utero matris, si extrahantur, et in aqua ponantur, petunt fundum; mortui vero extra uterum et aqua injecti innatent in ea. Quod signum ad infanticidia detegenda est evidentissimum.*" (*a*) The number of innocent females who may have been thus sacrificed through a physiological conceit, is a circumstance that must excite the most awful reflection, (*b*) It is now well ascertained, and as generally admitted, that the validity of the *hydrostatic test*, as usually applied, must afford very unquestionable indications. *Bohn*, (*c*) *Hoffman*, (*d*) and *Heister*, (*e*)

(*a*) *Baglivi.* Op. Omnia, p. 299.

(*b*) *Margaret Dickson*, whose remarkable resuscitation after execution we have already noticed (vol. ii, p. 91) was convicted on the evidence of a medical person, who deposed that the lungs of the child *swam in water.*

(*c*) De. Offic. Med. de Vulner. renunciat.

(*d*) Op. Patholog. Pract. t. i.

(*e*) De Fallaci Pulmon. Infant. Experiment.

have shewn that the lungs of a fœtus, born dead, will under some circumstances, to be hereafter explained, float in water; while those of one that has lived after its birth may sink in the same fluid. *Dr. Gordon Smith* is inclined to attribute *some* of the uncertainty, by which the minds of medical men have been obscured with regard to the pulmonary tests, to confusion in the method of conducting the experiment, for there is, says he, but one order in which the steps can be taken, and if the anatomist should inadvertently resort to one stage of the process before another that should have preceded, he will baffle his own efforts. In commencing an examination of the thoracic organs, we should, previous to the disturbance of the parts, notice whether any morbid appearances present themselves, such as adhesions between the lungs and the pleura costalis, &c. We should at the same time observe whether the lungs be collapsed, or dilated, and whether they cover the lateral parts of the pericardium. We then proceed to separate the pulmonary organs from the body, in order to submit them to the *hydrostatic test*, to which we have adverted. For the performance of this dissection, *Dr. Hutchinson* has given us so many complete and satisfactory directions, that we shall here introduce them for the instruction of the forensic physician. "Ligatures must be placed on the aorta and venæ cavæ, near their attachment to the heart; the trachea is then to be removed close to the bronchiæ; the vessels cut beyond the ligatures; and the heart and lungs, attached together, removed from the cavity of the thorax. If bloody, they should be cleansed with a sponge; and then the colour of the lungs, their consistence and elasticity, and their state with regard to healthy structure, be distinctly noticed,

without compressing them forcibly, or lacerating in any way their structure. If the body generally be in a state of putrid decomposition, it should be ascertained whether the lungs are also thus affected, and in what degree. A livid colour from congestion of dark coloured blood in the minute vessels, should not be mistaken for gangrene; an appearance of this kind seems often to have the same origin as the lividness of the surface of dead bodies. The lungs are to be turned with the bronchial trunks downwards, that any fluid which may be contained in these tubes may flow out; and whatever escapes from them should be preserved in a clean vessel. These organs are then to be weighed in conjunction with the heart. A vessel, of a foot or a little more in diameter, and of at least a foot and a half in depth, is to be filled to the height of not less than a foot with pure *fresh*, and if possible, *river* water, the temperature of which should be nearly equal to that of the air, unless this be very cold or very hot. The lungs and heart, still attached together, are to be placed in a gentle manner in this water. It must then be remarked, whether they float near the surface, or sink to the bottom; whether they fall suddenly, or descend slowly; whether the lungs turn uppermost, and float near the surface of the water, or about the middle of the fluid.

The heart is now to be separated from the lungs, having previously applied a ligature to the pulmonary vessels, to prevent the escape of the blood they may contain; and the weight of the heart alone then determined, that it may be subtracted from that of the heart and lungs together, as previously ascertained. The lungs are now to be placed alone in the water, and great attention must be paid to the position they assume in it; that is, whether they sink

rapidly or slowly, or float near the surface; whether, by reversing their vertical situation in the water, they sink more readily or with more difficulty; and, if any part constantly rises and is drawn under water by the rest, this part should be particularly marked.

The two lobes must be separated, and the above-mentioned experiment made with each distinctly, and any difference in the results remarked; if one lobe float, and the other sink, it should be noticed whether it is the right or left that floats. Each lobe is then to be cut into several pieces, taking care not to confuse those of the right with those of the left."

Having examined the physiological principles upon which the *hydrostatic test* is established, and explained the manner in which it is to be conducted, it remains for us to enumerate the several objections which have been urged against its validity.

1. *A fœtus may breathe as soon as its head is without the vagina, and immediately die.*—This is one of the great arguments adduced by *Dr. Hunter*; (*a*) "a child," says he, "will very commonly breathe as soon as its mouth is born, or protruded from the mother, and in that case may lose its life before its body be born; especially when there happens to be a considerable interval of time between what we may call the birth of the child's head, and the protrusion of its body. And, if this may happen when the best assistance is at hand, it is still more likely to happen where there is none; that is, where the woman is delivered by herself;" and he adds, "if a child makes but one gasp, and instantly dies, the lungs will swim in water as readily as if it had breathed longer, and had then been strangled." This opinion, however,

(*a*) On the uncertainty of the signs of murder in the case of bastard children.

must not be received without qualification. We admit that under such circumstances a portion of the lungs will become inflated, and therefore swim in water; but it would appear from the more precise and comprehensive views of later physiologists, that respiration is not completely performed on the first effort, but that it is a process gradually advancing to perfection; and that it will be more or less protracted according to the degree of vigour of which the infant is possessed. *Portal* has shewn by experiments (*a*) that the air enters the *right* lung sooner than the left, and that the left lobe is very often not at all dilated for several days. The same fact was observed by *Blancardi.* (*b*) *Dr. Hutchinson* states that he was informed by a late physician to the Foundling-hospital at Naples, who opened daily, on an average, the bodies of ten or twelve infants, which had generally died within twenty-four hours after birth, that he hardly ever found more than a very small portion of the lungs dilated by air; this portion was frequently not larger than a walnut in its green shell, and but rarely larger than a hen's egg, and it was commonly situate in the *right* lung. (*c*) "I have seen," continues the author above cited, "a case where the *right* lobe, when separated from the left, sank in water, though this was the most dilated by respiration, and the infant had lived forty hours, and cried pretty strongly: but it died from suffocation by being *overlaid*, as it is popularly termed, by the mother, which

(*a*) Memoires de l' Academie Royale des Sciences, Année, 1769.

(*b*) Anatom. Reform. p. 71.

(*c*) It should be understood, adds *Dr. Hutchinson*, that these children had never been fed before they were placed in the *turning box* at the hospital; which, perhaps, with the want of due warmth, &c. may have prevented their lungs being as much dilated as those of children of the same age, under ordinary circumstances.

had produced such an engorgement of blood in the lungs, as to counterbalance the influence which the small quantity of air they contained could have exerted on their specific gravity. A piece somewhat more than a cubic inch in volume was the greatest portion that in this case floated in water.

2. *The lungs may have been artificially inflated.*—It is so generally known, observes *Dr. Hunter*, that a child born apparently dead may be brought to life by inflating its lungs, that the mother herself, or some other person, might have tried the experiment. It might even have been done with a most diabolical intention of bringing about the condemnation of the mother. There exists not a doubt but that such an operation would impart buoyancy to the lungs, although the fact has been doubted. *Camper*, *Jager*, *Schmitt*, and *Buttner* decided the question by numerous experiments.

3. *The lungs may float, in consequence of putrefaction.*—We have stated on a former occasion that the buoyancy of the human body is materially influenced by the putrefactive process, (*vol.* ii, *p.* 40.) *Haller* procured the lungs of a child that died before its birth. They were of a dark red colour, and both when entire, and when cut in pieces, sank in water. A portion being left to putrefy in water, the colour became brighter, it was covered with air bubbles, ascended gradually as the process of putrefaction advanced, and at length reached the surface, where it continued to float. But in answer to the objection which such a fact would seem to oppose to the validity of the *hydrostatic test*, let it be remembered that the lungs are particularly unsusceptible of the putrefactive process, and resist it longer than any of the soft parts. So that the body must be very far ad-

vanced in decomposition before the lungs are found to participate in it. *Camper* instituted a number of experiments upon infants, at Amsterdam, by exposing their bodies to the action of water, as well as to that of air, and his results fully confirm the fact we have just stated. *Ballard* was called upon to examine a child, the muscles of whose face were reduced to "*boulli*"—were in a state of solution—and in which putrefaction had advanced so far as even to prevent discrimination of the sex, notwithstanding which the lungs immediately sunk. If we make incisions into these organs, when in a state of advanced putrefaction, we shall observe air bubbles of a considerable size, and running in lines along the fissures, between the component *lobuli* of the lungs; where such phenomena present themselves we may be assured, says *Dr. Hunter*, that the air is emphysematous, and not that which has been introduced by respiration; for, in this latter case, the air bubbles will be hardly visible to the naked eye. But there still remains another mode by which we may determine whether the gas diffused in the texture of the pulmonary organs be the effect of respiration, or decomposition. It consists in pressing portions of the lungs between the fingers, or twisting them in a folded cloth, with all the force we can command; when, should the gas have arisen from putrefaction, the portions thus treated will sink in water; a change which no force, however powerful, will effect in those cases where the gaseous distention has arisen from respiration.

From the view which we have taken of the *hydrostatic* test, and of the objections which have been urged against its validity, the practitioner will be enabled to appreciate its importance. *Plouquet*, de-

sirous of procuring additional evidence, respecting the existence of respiration, from the condition of the pulmonary organs, proposed a test founded on the *absolute* weight of the lungs compared with that of the body. Respiration produces two important changes in them—by inflating their texture it *diminishes* their *specific gravity;* and by promoting a determination of blood to their vessels, it increases their *absolute* weight; upon the former of these changes, the *hydrostatic test* is founded, as we have already explained; on the latter, *Professor Plouquet* endeavoured to found his "*Nova Docimasia Pulmonaris,*" which is now very generally known by the name of *Plouquet's test,* or *assay.* The blood-vessels, observes this distinguished physiologist, being collapsed and compressed in the lungs of the fœtus, admit only a small portion of blood; but after respiration, being dilated, and extended, and more free in the expanded lungs, they receive a greater quantity; in consequence of which they become still farther expanded, and of greater calibre. As this increased capacity of the vessels is necessarily *permanent,* a greater quantity of blood will remain after death in the arteries and veins, and more especially in the latter, than in the lungs of those infants who have never respired, and consequently the *absolute weight of the lungs must be increased.*

In conformity with these views, *Plouquet* found on examination, that the body of a male infant, born dead, and which had not respired, weighed 53040 grains, the lungs inclusive; and that these latter organs alone weighed 792 grains; the proportion of the lungs to the body, in weight, was therefore in this case as 1 to 67. In another infant, under similar cir-

cumstances, he found the proportion as 1 to 70. On examining an infant, born at the full period, and which had respired, the proportion was found to be as 2 to 70, so that the weight of the lungs was absolutely doubled by the act of respiration.

It would be a loss of time to enumerate the different objections which have been urged against the validity of this test, on various grounds, many of which admit of an easy answer. It is sufficient to state that experiments, subsequent to those of *Plouquet*, by *Haartman*, (*a*) *Struve*, (*b*) *Schmitt*, and *Lecieux*, (*c*) have shewn that no constant relation between the weight of the lungs and that of the body, under the circumstances above mentioned, can be established. The reason of which, as *Dr. Hutchinson* has justly observed, without considering the influence of variation in the original construction of the body, is sufficiently accounted for, by the great diversity in the manner in which respiration is established in new-born infants. We have already stated that, in a great proportion of them, it is but gradually and slowly effected; and that several days even may elapse before the lungs are fully dilated. *Dr. Gordon Smith* (*d*) is disposed to believe that data might be obtained for a just conclusion upon this point, if practitioners would institute farther inquiry into the subject; and, with this impression, he has been induced to enter more

(*a*) Stockholm, Acad. Hand. t. xx, p. 40.

(*b*) Dissert. de Docimas. Pulm. Ploucq.

(*c*) This author relates the results of four hundred examinations of bodies of children made at the Hospice de la Maternité at Paris, for the purpose of furnishing some evidence on this subject, and the results of them are almost as various as it was possible for them to have been, within a certain range.

(*d*) Principles of forensic medicine, p. 336.

fully into the history of the test, than we deem necessary, believing as we do, that it can never afford evidence sufficiently decisive for practical application. *Daniel* has proposed a modification of *Plouquet's* test, but which is more objectionable even than that which he professes to improve. The same physiologist considers that an inference may be drawn from the increased circumference of the thorax, and the vaulted appearance it assumes after respiration. The objections urged by *Dr. Hutchinson* to these latter indications appear to us to be unanswerable ; the circumference of the thorax, says he, varies so much in infants of the same age and sex, both absolutely and in proportion to other parts of their body, that it cannot be possible to obtain any decisive evidence from it. The vaulted appearance of the chest is almost equally fallacious in the generality of cases, or else it is devoid of utility ; because the figure of the thoracic parietes is not much changed until respiration has been fully established, and then we have other and more certain means of detecting its existence. Besides which, it appears from the experiments of *Schmitt*, that the thoracic parietes were distended outwards by artificial insufflation after death, as much as they are by actual respiration as it occurs in the new-born infant. With these remarks we shall dismiss the subject of *Docimasia Pulmonaris*, and proceed to inquire whether the structure of the heart is capable of affording any useful indications. There can be no doubt but that, some time after birth, we shall find on inspecting the heart, evident marks of the altered course of the circulation. The *foramen ovale* will be closed, and in extending our examination, we shall find that the *ductus arteriosus* and *canalis venosus*, have collapsed and assumed the appearance of imperforated

ligaments; but it must be remembered that such changes require some time for their completion, and in cases where the child has perished shortly after its birth, we do not believe that the alteration in structure will be sufficiently obvious to afford any information of practical application. The degree of importance which is to be attached to the arched state of the diaphragm has been already appreciated. The empty state of the urinary bladder and intestines has been alluded to by some authors, as affording a degree of presumptive evidence, since the evacuation of the urine from the former, and that of the *meconium* from the latter, are performed by most living children soon after birth. We are, however, inclined to attach but very little importance to such indications; and with regard to the *meconium*, every practitioner in midwifery knows well that it is frequently evacuated by the pressure of the maternal parts on the child during its passage through the pelvis; especially in breech presentations.

The stomach and intestines ought, in every case, to be considered as important objects of examination. It is possible that the trace of some aliment may be discovered, if so, no further proof can be required as to the child having lived. If any thing more than simple mucous fluid exist in the stomach, it should be examined by chemical tests. This remark, which we owe to *Dr. Hutchinson*, applies especially to the possibility of poison having been exhibited; and on this point the mucous membrane of the stomach will furnish useful evidence. If there should appear any fluid in this viscus, resembling water, it will be necessary to examine its nature, and to ascertain if any vegetable matters be present in it, such as portions of

weeds, straw, &c. In our examination we should always keep in mind the possibility of the child having been destroyed by *drowning*, *strangulation*, *poisoning*, and the *infliction of wounds*, subjects which we have already so fully discussed in the second volume of our work, that we do not consider it necessary to dwell upon them in this place.

The cranial cavity.—For the examination of this part *Dr. Hutchinson* has given us some very minute and valuable instructions, of which we shall avail ourselves. The cranial cavity, he observes, should be exposed, by making, in the first instance, an incision through the integuments of the skull, penetrating to the bone, from the root of the nose to the spinous process of the second or third cervical vertebra; another incision of the same kind should extend from one ear to the other, passing transversely over the summit of the head. Each of the four triangular portions of integuments thus formed, should then be detached from the cranium, beginning at their apex and terminating at their base. The temporal and occipital muscles should then be separated in a similar manner. After examining the state of the cranium, the bones may be removed by dividing the membranous connection between the parietal, frontal, temporal, and occipital bones, with scissars. This, however, should be done without lesion of the vessels of the brain, or of the venous sinuses; in order to avoid the lateral sinus which always contains fluid blood, and which is situated very near the mastoidean angle of the parietal bone, *Dr. Hutchinson* directs the anatomist, when the point just indicated is approached, to deviate a little from the membrane, and to cut the parietal bone itself near its margin. In the first

place, the view of the brain will afford presumptive evidence of its age; previous to the termination of the sixth month it will appear as a soft mass, equally white throughout its whole extent; in the eighth month the cerebral substance will have acquired more consistence, its interior will present a reddish colour, although its surface still remains white. The *pia mater*, which in the earlier stages seemed only to be over its surface, will now be found adherent to it; and some of those grooves and undulations become apparent, which afterwards constitute the circumvolutions. In pursuing the dissection of the brain, the practitioner must be careful in noting every morbid appearance, such as congestions, extravasations, &c. for the cause of death may have arisen from the injured structure of these parts.

C. *The character of the spot in which the body was found* will often afford presumptive evidence of considerable weight, but in availing ourselves of its indications, we must cautiously avoid the fallacies to which it may give origin; to some of which we shall have occasion to refer at a future period of the investigation. We next proceed to the consideration of the several problems involved in the second division of our inquiry, viz.

II. *Whether, supposing the child to have been born alive, its death was the result of natural causes, of wilful violence, or of negligence and abandonment?*

If sufficient proof should have been obtained that the child was born alive, we have to inquire into the causes of its death; upon which the anatomical dissection will have thrown some light, and in

a great measure, prepared our decision. Medical writers on the subject of infanticide have very judiciously considered the modes of violent death in new-born children, as divisible into two great classes, viz. those of *omission*, and those of *commission*. It will be convenient for us, on the present occasion, to arrange our remarks with reference to such a division.

Death by omission.—For want of due care the child may perish during, or immediately subsequent to, the labour. It may die from suffocation caused by the viscid mucus naturally existing about the pharynx and glottis in newly-born infants getting into the trachea, especially *if the infant has lain on its back for some time after its delivery;* or suffocation may be occasioned by the discharge of blood from the mother, or by the wet linen over it, collapsing and excluding the air, or by being drawn close to its mouth and nose by the suction of breathing. Children are, moreover, often born with a portion of the membranes over the face, which, if not removed, must impede respiration. In some cases strangulation is produced by the umbilical cord; the livid circle therefore round the neck, which without due consideration, might seem to afford a proof of criminal violence, is to be regarded with reference to the probability of such an occurrence; it is possible, adds *Dr. Hutchinson*, that the navel-string may be twisted round the neck of the infant, but loosely, until the body is nearly expelled; and then, if the placenta be firmly retained in the uterus, it may become tightened, and cause suffocation. These circumstances may happen when there is no person about the woman to render her proper assistance; and, therefore, careful examination is necessary, in order to ascertain, if, with the livid circle round the neck,

there are marks of nails, or points of fingers, or excoriation of the skin. The breadth of the mark, also, and whether or not it makes a complete circle, with the ends exactly meeting, and without deviating from this circle, should be carefully noticed; the latter circumstances conjoined cannot arise from a natural twisting of the navel string. The livid part should be carefully dissected, in order to ascertain if there are ruptured blood-vessels corresponding to it, whether the trachea or larynx be flattened, or their cartilaginous rings laterally compressed; for it is asserted that such injuries never can occur from the natural twisting of the navel string. The practitioner will be enabled by the foregoing remarks to appreciate the value of that indication, upon which the vulgar have ever laid much stress,—the swollen and red appearance of the countenance. *Dr. Hunter* has made the following judicious observation upon the phenomenon: "when the child's head or face looks swollen, and very red or black, the vulgar, because hanged people look so, are apt to conclude that it must have been strangled. But those who are in the practice of midwifery know that nothing is more common in natural births; and that the swelling and deep colour disappear gradually, if the child lives but a few days. This appearance is particularly observable in those cases where the navel-string happens to gird the child's neck, and where its head happens to be born some time before its body."

A woman suffering labour alone may have the fœtus escape from her, and fall to the ground, on its head, and be thus killed; or she may unexpectedly be seized with pains in situations at once destructive to the child. In the case of infants being found in privies, this circumstance ought not to escape our remem-

brance. A woman was tried at the Old Bailey for the murder of her child, by dropping it into a privy. She declared that while there for a natural purpose, an uncommon pain took her, the child fell, and she sat some time before she was able to stir. On this occasion, we learn from *Dr. Gordon Smith*, that a practitioner was examined on the possibility of such an event; who stated that an instance came within his own knowledge, where, while the midwife was playing at cards in the room, the woman was taken suddenly, and the child dropped on the floor. To this the author just cited adds another illustrative case. It recently happened, says he, in the circle of my own acquaintance, that a lady who had borne many children, and must therefore have been alive to the import of uneasiness in the last hours of pregnancy, was sitting in company at dinner, and perfectly free from any consciousness of approaching labour, when she experienced an irresistible impulse to repair to the water-closet. She had scarcely arrived there when she was delivered: now had the place of retirement been differently constructed, this infant might have perished. It will very properly be urged that a woman, on finding what has happened, ought, if her feelings and intentions were honest, to give immediate alarm. This is true, but says *Dr. Smith*, we must admit, in the first place, the possibility of her not being able to do so, in consequence of the effects of the occurrence on her own person; and, in the next place, it is but just to allow that, although an alarm, after she has fully recovered, might secure her in the case of trial, yet as it can be of no use in restoring the life of the child, the idea of concealment will more naturally arise.

A very remarkable case, in illustration of the subject under discussion, is related by *Burnett*, in his *Treatise on the Criminal Law of Scotland.* "It occurred at Aberdeen in September 1804. The girl had become pregnant in circumstances peculiarly disastrous; actuated by the strongest impulse of shame and remorse, she concealed her situation from every one, and ascribed her appearance to cold she had caught. On the day of her delivery she had been to market, and in returning home accidentally slipt her foot, and fell into a mill-pond, where she would have been drowned had she not obtained immediate assistance. She was carried all wet into an adjoining malt-kiln, where there was a large fire, and left under the charge of another woman. The latter having gone out for a very short time, leaving the girl sitting by the fire, found on her return that she had been delivered of a child. The infant was in life, and lying at the extremity of the ashes near the fire. The girl said that her pains came on unexpectedly while sitting by the fire, and that she became insensible and could give no assistance to her child. No violence appeared on the body of the child, but it appeared to have been scorched by the fire, which occasioned its death a few hours thereafter. The prosecutor consented to a petition for banishment."

The next circumstance which deserves notice under the consideration of the causes of death, by *omission*, is that of *neglecting to divide the navel-string, and to apply a ligature to the infantine portion of it.*—With regard to the value of the presumptive proof of criminal intention which such neglect may offer, there are several very weighty objections, and which have been enumerated by *Dr. Hutchinson*, in the following order. 1. The infant may perish during its birth from

hemorrhage from the placenta, or rupture of the navel string, and the mother may, or may not, have divided the latter. 2. The child may have lived after its birth, and the mother may have torn or cut asunder the navel-string, and finding no hemorrhage ensue she has not been led to put a ligature on the infantine portion, and afterwards hemorrhage has taken place from it, from which the infant has died. 3. The mother may discover the hemorrhage in the last mentioned case, and may apply a ligature to the navel string, but too late to preserve the infant's life. 4. The blood of the mother may be artfully placed about the child, and the navel string left untied; and the mother may wish to have it appear that the infant perished from hemorrhage occurring unknown to her, and that she was not aware of the necessity of tying the navel-string, even though it be found that she had *cut* it, not *torn it asunder* with her hands. In the first three cases we shall find, on dissection, evidence of extensive hemorrhage, as indicated by the emptiness of the heart and blood-vessels, paleness of the viscera, &c. In the last case, the proper fulness of the arterial and venous systems will betray the imposture. It is impossible, as *Dr. Hutchinson* very candidly admits, to trace any rules of general application respecting the first three cases. The decision must be partially founded on various collateral moral circumstances, which come especially within the province of the jury.

A new-born child may perish from exposure to cold. This cause of death will be indicated by the character of the place and circumstances under which its body was found. The appearance of the corpse, upon such an occasion, will also assist our judgment; there will generally be a paleness of the skin, and

a vacuity in the superficial vessels. *It may perish for want of nourishment.* But let it be remembered that new-born children are seldom, or never, famished to death, within a few days of their birth; for they require very little nourishment, and it was formerly the custom to keep them some days from the breast; such an omission, however, if suspected, may be ascertained by examining the stomach, and, at the same time, by deducing from the appearance of the umbilicus, (*a*) the probable period that has elapsed since its birth.

Death by commission.—We have already pointed out the various means by which the death of the newly-born infant is usually accomplished; such as by wounding, suffocating, strangling, poisoning, &c.; and in the course of our work we have so fully considered the phenomena of violent death, that it cannot be necessary, on the present occasion, to expend farther time on their discussion.

The last object of the inquiry, viz. *the appearance and condition of the woman's person*, has been also considered under the history of *parturition*, and the various questions to which it has given origin, *vol.* i, *p.* 249.

We have thus then presented to the reader the various avenues of information, which the sciences of anatomy and physiology are capable of disclosing; and it will, we trust, appear evident, that the forensic physician can rarely furnish more than presumptive evidence in the support of cases of imputed child-murder.

With the moral circumstances of the case the medical-jurist can have nothing to do; and yet it is impos-

(*a*) The umbilical cord generally separates from the navel on about the *fifth* day, and is almost always partially detached on the *fourth*; the ulcerated surface is commonly healed by the *eighth* or *ninth* day.

sible not to inquire whether the deed may not frequently be the result of insanity. Such was the opinion of *Dr. Hunter;* and we cordially agree with *Dr. Smith,* that a verdict to this effect might be returned in many cases of this kind with at least as much truth, as in some of suicide. It must not be urged, continues the last mentioned author, that the insanity here is not real because temporary, as long as *temporary insanity* is so readily admitted in the other case; and we know well that in many instances of the like state of mind, where suicide is unsuccessfully attempted, the supposed lunacy shortly disappears. This plea, however, rarely avails the child-murderer; and yet if the loss of property, or other misfortunes, are to be taken into account as presumptive causes of insanity where there is real evidence of the fact, (the *feelings* arising from which being the real goad that stings some men to their fate) are we to give a modest female,—one that has probably erred through excess of confidence and attachment —no credit for despair, and distraction, under the anticipation of the infamy that is approaching her? (*a*)

It is stated by several authors, that the period at which puerperal mania and phrenitis supervenes is variable, but that it is seldom, if ever, sooner than the third day; often, not for a fortnight; and, in some cases, not for several weeks after delivery. We must be cautious, however, in not applying this general assertion, to the disparagement of particular cases; for several instances are recorded which furnish striking exceptions to the rule. "In the year 1668 at *Aylesbury*, a married woman of good re-

(*a*) Principles of forensic medicine, p. 311.

putation being delivered of a child, and not having slept many nights, fell into a temporary phrenzy, and killed her infant in the absence of any company; but, company coming in, she told them she had killed her infant, and *there* it lay; she was brought to gaol presently, and after some sleep she recovered her understanding, but marvelled how or why she came thither; she was indicted for murder, and upon her trial the whole matter appearing, it was left to the jury with this direction, that if it did appear that she had any use of reason when she did it, they were to find her guilty; but if they found her under a phrenzy, though by reason of her late delivery and want of sleep, they should acquit her; that had there been any occasion to move her to this fact, as to hide her shame, which is ordinarily the case of such as are delivered of bastard children and destroy them; or if there had been jealousy of the husband that the child had been none of his; or if she had hid the infant, or denied the fact, these had been evidences that the phrenzy was counterfeit; but none of these appearing, and the honesty and virtuous deportment of the woman in her health being known to the jury, and many circumstances of insanity appearing, the jury found her not guilty, to the satisfaction of all that heard it." 1 *H. P. C. p.* 36. Had this woman been of doubtful character, though innocent, she might have been executed, for want of medical evidence to prove the nature and frequency of puerperal insanity.

OF CRIMINAL RESPONSIBILITY, AND PLEAS IN BAR OF EXECUTION.

In the preceding pages we have endeavoured to lay down such rules, and to draw attention to such points, as may enable medical witnesses to assist the ends of Justice in detecting the perpetration of crime; another duty remains: having discovered the guilty, questions may yet arise, as to whether the criminal is or is not a proper subject for the severity of the law; 1st, in respect of natural incapacity, as in the case of infants and idiots *a nativitate*; 2d, of accidental incapacities, as in lunacy and temporary derangement of intellect. So also it may be a medical question whether a prisoner stands mute of malice, or by the visitation of God; and 3dly, of temporary unfitness for punishment, as where judgment on a female is to be respited, by reason of her pregnancy; to these we shall add the plea of non-identity, for though we have already stated that personal identity does not appear to us to be a subject peculiarly appropriate to medical jurisprudence, (*a*) yet as the greater number of writers on this subject have so considered it, we should not be warranted in omiting all notice of the subject.

"It is clear that an infant above fourteen and under twenty-one is equally subject to capital punishments, as well as others of full age; for it is *præsumptio juris*, that after fourteen years they are *doli capaces*, and can discern between good and evil; and if the

(*a*) See *vol.* i, *p.* 219, *tit. Suppositious Children.*

law should not animadvert upon such offenders by reason of their nonage, the kingdom would come to confusion. (*a*) Experience makes us know, that every day murders, (*b*) bloodsheds, burglaries, larcenies, burning of houses, (*c*) rapes, (*d*) clipping and counterfeiting of money, are committed by youths above fourteen and under twenty-one; and if they should have impunity by reason of such their minority, no man's life or estate would be safe. In my remembrance, at *Thetford*, a young lad of sixteen years old was convict for successive wilful burning of three dwelling houses, and in the last of them burning a child to death, and yet had carried the matter so subtilly, that by a false accusation of another person for burning the first house, an innocent person was brought in danger, if it had not been strangely discovered: he had judgment to die, and was executed accordingly." 1 *Hale. P. C. p.* 25.

(*a*) At this moment London is infested by numerous bands of infant depredators, who in desperate hardihood, skill, perseverance, and combination, emulate the oldest criminals; female infants are permitted to walk the most public streets at mid-day, whose *apparent* age might bring their criminal associates within the statute 18 *Eliz.* The new vagrant act may give an useful stimulus to the police on this point, however vexatious and impolitic it may be on others.

(*b*) *Alice de Walborough*, æt. 13, was burnt for murdering her mistress.

(*c*) At *Abingdon* assizes, Feb. 23, 1629, before *Whitlock* justice, one *John Dean*, an infant between eight and nine years, was indicted, arraigned, and found guilty of burning two barns in the town of *Windsor;* and it appearing upon examination that he had malice, revenge, craft, and cunning, he had judgment to be hanged, and was hanged accordingly. *Note*, 1 *H. P. C. p.* 25. At *Dorchester* assizes, March 1794, *Elizabeth Marsh*, aged 15 years, was convicted of the murder of *John Nevil*, her grandfather, at *Morden*, and was executed.

(*d*) *Giles East*, a boy under 17 years of age, was convicted at the Kingston Assizes of carnally knowing a girl of 9 years of age, (stat. 18 *Eliz.*) and was executed Jan. 20, 1823.

But though above fourteen, criminal incapacity cannot be presumed on the mere pretence of nonage, children considerably under that age may be found *doli capaces*, and be tried, and even executed accordingly, whenever from peculiar evidence it shall appear that by precocity in vice or intellect they can clearly distinguish right from wrong, *malitia supplet ætatem:* thus *John Dean* was executed under the age of nine for arson and murder; and *William York*, in more modern times, was tried and condemned for murder at ten. (*a*) Seven years of age, or the period

(*a*) At Bury assizes 1748, *William York*, a boy of ten years of age, was convicted before Lord Chief Justice *Willes* for the murder of a girl of about five years of age, and received sentence of death: but the Chief-Justice, out of regard to the tender years of the prisoner, respited execution, till he should have an opportunity of taking the opinion of the rest of the judges, whether it was proper to execute him or not, upon the special circumstances of the case, which he reported to the judges at Serjeant's-inn in Michaelmas term following.

The boy and girl were parish children, put under the care of a parishioner, at whose house they were lodged and maintained; on the day the murder happened, the man of the house and his wife went out to their work early in the morning, and left the children in bed together; when they returned from work, the girl was missing; and the boy being asked what was become of her, answered that he had helped her up and put on her cloaths, and that she was gone he knew not whither. Upon this, strict search was made in the ditches and pools of water near the house, from an apprehension that the child might have fallen into the water. During this search, the man, under whose care the children were, observed, that a heap of dung near the house had been newly turned up; and upon removing the upper part of the heap, he found the body of the child about a foot's depth under the surface, cut and mangled in a most barbarous and horrid manner.

Upon this discovery, the boy, who was the only person capable of committing the fact that was left at home with the child, was charged with the fact, which he stiffly denied.

When the coroner's jury met, the boy was again charged, but persisted still to deny the fact. At length, being closely interrogated, he fell to crying, and said he would tell the whole truth. He then said,

of absolute infancy, is probably the limit within which actual crime or sin cannot be imputed morally or legally; (see 1 *H. P. C. p.* 19; 1 *Hawk. P. C. p.*

that the child had been used to foul herself in bed; that she did so that morning (which was not true, for the bed was searched and found to be clean); that thereupon he took her out of the bed, and carried her to the dung heap; and with a large knife, which he found about the house, cut her in the manner the body appeared to be mangled, and buried her in the dung heap; placing the dung and straw that was bloody under the body, and covering it up with what was clean; and having so done, he got water and washed himself as clean as he could.

The boy was the next morning carried before a neighbouring justice of the peace, before whom he repeated his confession, with all the circumstances he had related to the coroner and his jury. The justice of the peace very prudently deferred proceeding to a commitment, until the boy should have an opportunity of recollecting himself. Accordingly he warned him of the danger he was in if he should be thought guilty of the fact he stood charged with, and admonished him not to wrong himself: and then ordered him into a room, where none of the crowd that attended should have access to him.

When the boy had been some hours in this room, where victuals and drink were provided for him, he was brought a second time before the justice, and then he repeated his former confession: upon which he was committed to gaol.

On the trial evidence was given of the declarations before-mentioned to have been made before the coroner and his jury, and before the justice of the peace; and of many declarations to the same purpose which the boy made to other people after he came to gaol, and even down to the day of his trial; for he constantly told the same story in substance, commonly adding that the devil put him upon committing the fact. Upon this evidence, with some other circumstances tending to corroborate the confessions, he was convicted.

Upon this report of the Chief-Justice, the judges, having taken time to consider it, unanimously agreed,

1st, That the declarations stated in the report were evidence proper to be left to the jury.

2dly, That supposing the boy to have been guilty of this fact, there are so many circumstances stated in the report, which are undoubtedly tokens of what my Lord Chief-Justice *Hale* somewhere calleth a *mischievous discretion*, that he is certainly a proper subject for capital punishment, and ought to suffer; for it would be of very dangerous conse-

1; 1 *Bl. Com. p.* 464); but the law of England does not appear to have fixed any determinate period; (*a*) *Alfred* decreed that none should be punished capitally for theft under twelve years of age. *Athelstan* enlarged the period till fifteen, (see *notes* 1 *H. P. C. p.* 12, 23); but the old standard of twelve appears to

quence to have it thought, that children may commit such atrocious crimes with impunity.

There are many crimes of the most heinous nature, such as in the present case the murder of young children, poisoning parents or masters, burning houses, &c. which children are very capable of committing; and which they may in some circumstances be under strong temptations to commit; and therefore, though the taking away the life of a boy of ten years old may savour of cruelty, yet as the example of this boy's punishment may be a means of deterring other children from the like offences; and as the sparing this boy, *merely on account of his age*, will probably have a quite contrary tendency, in justice to the public, the law ought to take its course; unless there remaineth any doubt touching his guilt.

In this general principle all the judges concurred; but two or three of them, out of great tenderness and caution, advised the Chief-Justice to send another reprieve for the prisoner; suggesting that it might possibly appear on farther inquiry, that the boy had taken this matter upon himself at the instigation of some person or other, who hoped by this artifice to screen the real offender from justice.

Accordingly the Chief-Justice did grant one or two more reprieves; and desired the justice of the peace who took the boy's examination, and also some other persons in whose prudence he could confide, to make the strictest inquiry they could into the affair, and report to him. At length he, receiving no farther light, determined to send no more reprieves, and to leave the prisoner to the justice of the law at the expiration of the last: but, before the expiration of that reprieve, execution was respited till farther order, by warrant from one of the Secretaries of State: and at the Summer assizes 1757, he had the benefit of his Majesty's pardon, upon condition of his entering immediately into the sea-service.

(*a*) There is a precedent in the register, *fol.* 309, *b*, of a pardon granted to an infant within the age of seven years, who was indicted for homicide: in this case the jury found, that he did the fact before he was seven years old. 1 *H. P. C. note*, *p.* 27.

have prevailed from the time of *Hen.* 1; thus in the time of *Ed.* 1, *Adam de Arnhale*, æt. 12, was committed to the custody of the marshal for stealing nine shillings at night in the dwelling house; *postea habito respecto ad imprisonamentum, quod prædictus Adam habuit, & etiam ad teneram ætatem ejusdem Adæ, eo quod non nisi ætatis* 12 *annorum, qui talis ætatis judicium ferre non potest, ideo* de gratia *regis deliberetur*, 1 *P. C.* 24; but he was spared, as *Sir M. Hale* says, *de gratia regis*, in respect that he was passed the old standard of twelve years.

If an infant clearly under seven years of age be indicted, the case ought not to go to the jury; but the prisoner should be discharged by the court; for "he cannot be guilty of felony, whatever circumstances of discretion may appear; for *ex presumptione juris* he cannot have discretion, and no averment shall be received against that presumption;" (1 *H. P. C.* p. 28) but if it be not apparent that he is under seven, and he have sufficient discretion, then, as in the case mentioned (*note a*) the issue may go to the jury; and with their verdict they may find, according to the evidence, that he was under seven years of age, and the court may then discharge him, for it was no felony. 1 *H. P. C.* 27. Also if the prisoner be above seven, and under twelve years of age, unless there be apparent proof of capacity; but it is safer for the court to discharge him, for his trial can answer no useful purpose; and if he once be a felon convict by the verdict of a jury, though subsequently pardoned, the circumstance will probably give a stamp to his character which is never likely to be effaced. Therefore if the humanity of magistrates and prosecutors does not previously interpose to save children from

(*a*) See preceding *Note.*

this peril, and the contamination of a gaol, the discretion of the judge may; and it is fortunate that, in London at least, public munificence, in this as in many other cases, has supplied the want of legislation: the Philanthropic and other similar societies afford a refuge and prospect of amendment for the infant culprit, to them therefore he should be committed.

As the fact of absolute infancy may generally be ascertained by the mere view of the party, and his capacity ascertained by questions propounded by the court, an infant prisoner may, as before stated, be discharged without further trial; not so however in cases of idiotcy, madness, or lunacy, these must be tried by a jury, for they may easily be feigned, and it is therefore by evidence of previous conduct that the question is to be determined, rather than by reference to the prisoner's demeanor in court, which may probably be counterfeit.

If the prisoner be found to be an idiot, he must be discharged of the indictment, and handed over to safe custody, (*a*) but if he be only lunatic, then other questions arise; first, whether the prisoner is then in a lucid interval, for if he be not, he should not be arraigned at that time; "but the judge in his discretion may discharge the jury of him, and remit him to gaol to be tried after the recovery of his understanding, especially if any doubt appear upon the evidence touching the guilt of the *fact*, and this *in favorem vitæ;* and if there be no colour of evidence to prove him guilty, or if there be a pregnant evidence to prove his insanity at the time of the fact committed, then upon the same favor of life and liberty it is fit it

(*a*) Vide ante, vol i tit. Idcots and Lunatics.

should be proceeded in the trial in order to his acquittal and enlargement." 1 *H. P. C.* 35. (*a*)

Secondly, if he be then in a lucid interval, and therefore fit to be tried, whether he was so at the time of the act committed, and this must be tried according to the whole evidence both of the fact and the lunacy, on a plea of not guilty. (*b*)

For criminal purposes it is not sufficient that a prisoner have been previously found idiot or lunatic, or the contrary, by inquisition in chancery, 1 *H. P. C. p. 33*, though the circumstance may create a strong presumption. For there may be a partial insanity which may disqualify a man from the management of his estate, and therefore render him a fit subject for the equitable protection, although he may have a perfect sense of right and wrong in criminal matters, and ought therefore to be responsible for his acts. Personal antipathies and fancied injury are constant subjects of limited insanity; but these ought not to excuse murder; for such a doctrine, by removing the restraints of fear, would constantly convert the passions of hatred and revenge, in themselves limited madness, into absolute insanity.

"He that is *non compos mentis* and *totally* deprived of all compassings and imaginations, cannot commit high treason by compassing or imagining the death

(*a*) If the *fact* be found, he must be committed under the statutes 48 & 49 *Geo.* 3, for safe custody. See vol. i, p. 306.

(*b*) "By the common law, if it be doubtful whether a criminal, who at his trial is in appearance a lunatic, be such in truth or not, it shall be tried by an inquest of office to be returned by the sheriff of the county wherein the court sits, and if it be found by them that the party only feigns himself mad, and he still refuse to answer, he shall be dealt with as one that stands mute. 1 *Hawk. P. C. c.* 2, and authorities there cited; as to standing mute see vol. 2, *c.* 56, and 12 *Geo.* 3, *c.* 20.

of the king; for *furiosus solo furore punitur;* but it must be an *absolute* madness, and a total deprivation of memory." *Coke, P. C. p. 3*; but in *Beverly's* case, 4 *Rep.* 124, he says "*Mes in ascun cases non compos mentis poit committe haut treason, comme si il tua, ou offer a tuer le roy.*" "This," says *Sir Mathew Hale*, "is a safe exception, and I shall not question it, because it tends so much to the safety of the king's person: but yet the same author (*Coke P. C. p.* 6) tells us, that though this was anciently thought to be law, yet it is not so now; for such a person as cannot compass the death of the king by reason of his insanity, cannot be guilty of treason within the statute of 25 *Ed.* 3." Nothing can be more honourable to the independent impartiality of the English law than such an interpretation, amply illustrated in the cases of *Hatfield* (27 *How. St. Tri.*) and others, who had attempted the life of his late Majesty *George* the 3d; and this more especially, as the king must at all times be more exposed to this species of attack than any other person; for beside the sense of supposed wrong, delay or perversion of justice, exaggerated political feeling, (*a*) or other causes all pointing the maniac to the same object, there is no madness more frequent than fancied greatness; lunatic asylums are filled with imaginary emperors, kings, princes, and nobles, whose only glimmering of reason is to direct their vengeance against the supposed usurpers of their dignities.

"He who is guilty of any crime whatever through his voluntary drunkenness shall be punished for it as much as if he had been sober." 1 *Hawk. P. C.* 3. "A drunkard," says *Sir E. Coke*, (1 *Ins.* 247) "who

(*a*) For the case of *Bellingham* executed for the murder of *Mr. Percival*, see Appendix to *Collinson* on Lunacy.

is *voluntarius dæmon*, hath no privilege thereby." 4 *Bl. Com.* 26. But if by continual drunkenness he have become absolutely mad, then the original cause is not referred to, and he may be excused; not so however if there be only a predisposition to temporary madness, and that madness be voluntarily excited by drinking. There are many men, soldiers, who have been severely wounded, in the head especially, who well know that excess makes them mad; but if such persons wilfully deprive themselves of reason, they ought not to be excused one crime by the voluntary perpetration of another. (*a*)

"He who incites a madman (idiot, infant, or lunatic) to do a murder or other crime, (as to kill himself) is a principal offender, and as much punishable as if he had done it himself." 1 *Hawk. P. C. p. 3 and* 118. 1 *H. P. C.* 617.

"It seems agreed at this day, that if one, who has committed a capital offence, become *non compos* before conviction, he shall not be arraigned; and if after conviction, that he shall not be executed." 1 *Hawk. P. C.* 2; 1 *H. P. C.* 36" Indeed in the bloody reign of *Henry* the eighth, a statute was made (33 *H.* 8, *c.* 20) which enacted, that if a person, being *compos mentis*, should commit treason, and after fall into madness, he might be tried in his absence, and should suffer death, as if he were of perfect memory. But this savage and inhuman law was

(*a*) *Lord Ferrers* committed the murder of his steward *Johnson* after drinking porter to excess. See State Trials. *John Dey* of Dereham, in Norfolk, after a paroxysm of drunkenness rose in the middle of the night, and cut the throats of his father and mother, ravished the servant maid in her sleep, and afterwards murdered her! A somewhat analogous case was presented to us in the history of *Nicholson*, who murdered *Mr.* and *Mrs. Bonar* at Chiselhurst. These men were, however, condemned and executed.

repealed by the *Stat.* 1 *and* 2 *P. and M. c.* 10. For as is observed by *Sir Ed. Coke*, "the execution of an "offender is for example, *ut pœna ad paucos, metus* "*ad omnes perveniat*: but so it is not when a mad- "man is executed; but should be a miserable spec- "tacle, both against law, and of extreme inhuma- "nity and cruelty, and can be no example to others." 4 *Bl. Com. p.* 25.

Pregnancy is a good plea in bar of execution; but it does not prevent trial or sentence; in a recent instance, however, when a woman was brought to the bar evidently in labour, she was remanded by the court; and query, whether this discretion ought not to be exercised in all cases of advanced pregnancy; for the agitation of the trial may be of more fatal effect than the judgment of the law, and the unfortunate woman, though acquitted, may perish with her child from the mere effect of mental distraction.

When the plea of pregnancy is made to stay execution "the judge must direct a jury of twelve matrons or discreet women to inquire the fact: and if they bring in their verdict *quick with child* (for barely *with child* (*a*) unless it be alive in the womb, is not sufficient) execution shall be stayed generally till the next session: and so from session to session till either she is delivered, or proves by the course of nature not to have been with child at all. But if she once hath the benefit of this reprieve, and has been delivered, and afterwards become pregnant again, she shall not be entitled to the benefit of a further respite from that

(*a*) Here again the law of the land is at variance with what we conceive to be the law of Nature; and it is at variance with itself, for it is a strange anomaly that by the law of real property, an infant *in ventre sa mere* may take an estate from the moment of its conception, and yet be hanged four months afterwards for the crime of its mother.

cause. (*a*) For she may now be executed before the child is *quick* in the womb; and shall not, by her own incontinence, evade the sentence of justice." 4 *Bl. Com.* 395; (see also 2 *Hawk. P. C.* 658, and authorities there.) But *Sir M. Hale* says that though she be *quick* a second time she shall have no respite on that account. 1 *P. C.* 369. And yet he afterwards draws a nice distinction *in favorem prolis*, that if the woman were not quick, or with child at all, (*b*) at the time of the first inquest of the matrons, and afterwards become with child, she shall have her respite; "for the advantage she had at first was not really by reason of pregnancy, but by a mistake of the jury of women." "And therefore as hath been said, in all cases of reprieves for pregnancy, the judge ought to make a new demand, what the prisoner hath to say wherefore execution should not be awarded." *Ib.* And so in all cases where any time intervenes between the attainder and the award of execution, for the party may have become insane, or may plead pregnancy, or a pardon, or an act of grace, or diversity of person, that he is not the same that was attainted. 1 *Bl. Com.* 396.

This brings us to the last of the pleas which we have proposed to treat upon under this head. The question of Personal Identity may arise in many ways; as whether a child claiming an inheritance is the same that he pretends, or is pretended to be, as in the *Douglas* or *Anglesea* causes; (vide ante) whether a prisoner is actually the person who committed a particular offence, when the jury tries the fact and the identity to-

(*a*) This is another instance in which the question of superfœtation may arise, for a woman, according to that doctrine, may be delivered of one child, and at the same time be pregnant of another.

(*b*) *Sir Mathew Hale* says this case did occur at Aylesbury.

gether; and where a prisoner after conviction escapes and is retaken, whether he is the same that was convicted. (*a*) The former cases we have noticed under the heads of Suppositious Children, vol. i, p. 220, warning our readers not to be too hasty in determining identity upon mere resemblance. (*b*) And in the

(*a*) For the Scotch law on this subject see *Burnett*'s Crim. Law, 595.

(*b*) Cases of mistaken identity have occurred more frequently than persons unacquainted with the subject could suppose. We shall relate a few instances. At the Old Bailey sessions, for September 1822, before the Common Serjeant and Middlesex Jury, *Joseph Redman* was indicted for assaulting *William Brown*, on the King's highway, and taking from his person a gold watch, &c. his property. Prosecutor stated, on cross-examination, that he knew a man of the name of *Greenwood*, so much like the prisoner, with his hat on, that he should hardly know one from the other. *Greenwood* was in custody, and appeared at the bar, when the similarity between them struck every body with astonishment. The prisoner, *Redman*, proved an *alibi*, and the jury returned a verdict of *not guilty*. We have frequently in the preceding parts of our work alluded to the case of *Richard Coleman*, a brewer's clerk, who was indicted at the assizes held at Kingston, in Surry, in March 1749, for the rape and murder of *Sarah Green* on the 23d of July preceding, when he was capitally convicted, and executed on Kennington Common, on the 12th of April 1749. In this case, *Coleman* was positively sworn to by *Sarah Green*, just before her death, as being one of the assailants. Two years after the execution of this unfortunate man, it was discovered that *James Welch*, *Thomas Jones*, and *John Nicholls*, were the persons who had treated *Sarah Green* in the inhuman manner which had occasioned her death. *John Nicholls* was admitted King's evidence, and *Welch* and *Jones* were accordingly convicted and executed. Another case in which the identity of a person was erroneously sworn to, was that of *Mr. James*, a tailor, who was robbed on the Dulwich road, by the notorious gang of highwaymen that infested the environs of London, and was headed by a person named *Cooper*, who, after a life of crime, suffered death for the murder of *Saxby*, near Dulwich. In this case *Mr. James* swore positively to two soldiers in the Guards, who were accordingly tried for the offence, but fortunately, acquitted. A short time after this event the same gang robbed one *Jackson*, a farmer, in a lane near Croydon, for which robbery two farriers, named *Skelton* and *Killet*, were apprehended, and being tried at the ensuing assizes for Surry, the latter was acquitted, but the former was convicted on the positive oath of the person robbed, and, although innocent, suffered death.

last case "a jury shall be impanneled to try the collateral issue, namely, the identity of his person; and not whether guilty or innocent; for that has been

Martin Clinch, bookseller, and *James Mackley*, printer, were tried at the Old Bailey, in 1797, before *Mr. Justice Grose*, for the wilful murder of *Syder Fryer*, *Esq.* at the back of Islington workhouse, and were convicted and executed. On this occasion the identity of the prisoners was positively sworn to by *Miss Ann Fryer*, who was in company with her cousin, the deceased, at the time of the robbery and murder. Some years afterwards *Burton Wood*, who was executed on Kennington common, and *Timms*, who suffered a similar fate at Reading, severally confessed at the gallows the commission of the deed, for which *Clinch* and *Mackley* had innocently suffered. To the above interesting cases we may add that of *Robert* and *Daniel Perreau* (twin brothers,) who were tried in 1775, and executed for a forgery upon *Mr. Adair*. These persons so nearly resembled each other that *Mr. Watson*, a money scrivener, who had drawn eight bonds, by order of one or other of the brothers, hesitated to fix on either, in consequence of their great personal resemblance; upon being pressed, however, to make a positive declaration, he at length fixed upon *Daniel*. The name of these unfortunate men is familiar to the public, from the well known exclamation of our late king, upon being asked to pardon *Dr. Dodd*, "if I *save Dodd*, I shall have *murdered* the *Perreaus*."

Upon the subject of personal identity, a curious question has presented itself for discussion, which requires some notice on this occasion—*the degree of light which may be necessary to enable an observer to distinguish the features, so that the person may be hereafter identified?* In a case which occurred in France in 1809, of a person shot in the night, it was stated that the flash of the pistol enabled the witness to identify the features of the assassin. The possibility of the statement was referred to the physical class of the Institute, who reported against it. Still, however, *M. Foderé*, who relates the circumstances, is inclined to believe that, if the persons be at a small distance, and the night be dark, such an event is by no means impossible. (*Med. Leg.* t. i, p. 28.) The following English case may be here introduced in illustration of the question. "*John Haines* was indicted, *January* 12, 1799, for maliciously and feloniously shooting at *H. Edwards*, *T. Jones*, and *T. Dowson*, Bow-street officers, on the highway. *Edwards* deposed that, in consequence of several robberies having been committed near Hounslow, he, together with *Jones* and *Dowson*, were employed to scour that neighbourhood; and that they accordingly set off in a post-chaise on the evening of Saturday, November 10th, when they were attacked near Bedfont by two persons on horse-

decided before. And in these collateral issues the trial shall be *instanter*, and no time allowed the prisoner to make his defence or produce his witnesses, unless he will make oath that he is not the person attainted: (*Fors. C. L.* 41) neither shall any peremptory challenges of the jury be allowed the prisoner; though formerly such challenges were held to be allowable, whenever a man's life was in question." 4 *Bl. Com.* 396. And query whether this is not the better doctrine; the case of *Mr. Radcliffe*, brother of *Lord Derwentwater*, (*Fors. C. L.* 41) in which the contrary was held, was for high treason shortly after the rebellion of 1745; and as *Sir M. Forster* says,

back, one of whom stationed himself at the head of the horses, while the other went to the side of the chaise. The night was dark, but *from the flash of the pistols* he could distinctly see that it was a dark-brown horse, between 13 and 14 hands high, of a very remarkable shape, having a square head, and very thick shoulders; and, altogether such that he could pick him out of fifty horses; he had seen the horse since at *Mr. Kendall's* stables, in Long Acre. He also perceived, *by the same flash of light*, that the person at the side-glass had on a rough-shag, brown great coat.

Writers on forensic medicine have enumerated the various circumstances, by which the countenance of an individual may be so changed, as to defeat every attempt to identify him. *Foderé* mentions the following, *age; loss, or acquisition of fat; change in the colour of the eyes or hair; the effects of climate, diet, diseases, and passions of the mind.* These may also be metamorphosed by art. The influence of mental anxiety in changing the countenance is universally acknowledged—

> Danger, long travel, want, or woe,
> Soon change the form that best we know;
> For deadly fear can time outgo,
> And blaunch at once the hair;
> Hard toil can roughen form and face,
> And want can quench the eye's bright grace,
> Nor does old age a wrinkle trace
> More deeply than despair.
>
> *Marmion, Canto I.*

speaking of *Monmouth's* attainder, "that was a time of great heat and violence, and few things then done ought to be drawn into example." *Ib.* 44. There does not appear to be any good reason why a prisoner should not have all the safeguards on a collateral issue or inquest of office, which are allowed on the main issue; especially when, as in the present instance, his life depends upon the question.

OF PUNISHMENTS.

Punishments may be divided into three classes; capital, when the death of the offender is intended to deter others from similar offence; precautionary, when a noxious individual is removed from general society by imprisonment or transportation; and correctional, when by some pain or penalty inflicted on the individual, he is to be deterred from future crime. Though the subject would admit of much curious detail, our remaining space will not allow us to trace the different modes or modifications of legitimate punishment used in various nations or ages; nor to enter our protest of abhorrence against the many and inhuman tortures which religious fanaticism or political rancour have invented for their antagonists; the only point on which we can physiologically have occasion to observe, as applicable to the capital punishments of the present times, is, that they should be inflicted with as little pain as possible to the criminal, lest compassion for the sufferings of the man, should supersede the salutary horror of his offence; an end which is really, though not apparently, attained in our ordinary mode of execution by hanging; the victim does not suffer, though sometimes his convulsive struggles induce a contrary belief; but the method is defective in one point, it is not calculated to produce a deep impression on the minds of spectators, *Pompa mortis magis terret quam mors ipsa.* The French mode of decapitation, though held in abhorrence from the outrages with which its very name has

become associated, is equally humane; an instant terminates the mortal sufferings of the criminal; for this reason it was originally adopted, and when we consider that it superceded the barbarous punishment of breaking on the wheel, previously in use, and the clumsy and uncertain method of decapitation by the sword or axe, we feel ourselves justified, in spite of popular prejudice, in designating the guillotine (*a*) an invention of humanity.

Decapitation is also a punishment known in the law of England, and as a more dignified and impressive death, is reserved for the execution of nobles, or distinguished commoners, in cases of high treason, the rest of the barbarous sentence (now abolished by act of parliament), and the previous sentence of hanging, being dispensed with by the king's authority.

The barbarous punishment of burning, formerly part of the law, is no longer in use; Catharine Hayes, to whose case we have alluded (vol. ii, p. 73), was the last who suffered in this manner.

On the subject of imprisonment we have already commented, (vol. ii, p. 112), and from the very general attention now excited, as well by the discovery of abuses, as by an encreasing spirit of humanity, we may expect the best results.

Of punishment, not capital, there are two which require medical consideration; the one is military flogging, the other the novel invention of the tread-mill. On the first of these, we might have had more

(*a*) Or *Guillot's* daughter, so named from a physician of the name of Guillot, its inventor; it is singular, that a somewhat similar engine, which is or was preserved in the Tower of London, was called the Maiden in Scotland, and in England the Earl of Exeter's daughter. By the same figure, the Gunner's daughter is the carriage to which a sailor is lashed for punishment.

cause to complain, had the old system of the army been continued; it is however due to the character of the present Commander in Chief to notice, that under his direction the punishment of flogging has been much diminished; regimental courts martial, composed of five officers (possibly *infants*), are now restricted in their sentences to the infliction of three hundred lashes; formerly double the number was deemed a moderate punishment; and there is good reason to believe, that the discipline of a regiment, and the capacity of a commanding officer, is no longer considered in the direct, but on the contrary, in the inverse ratio of the number of lashes inflicted: (*a*) we need not say that the general state and conduct of troops has proved the policy of the alteration, we have only to hope that the improvement will be extended, and that the English army will not long be subjected to a degrading and barbarous torture, from which less moral men, and much worse soldiers, are exempted in every other service in Europe. It is necessary, however, that till this very desirable reform is effected, some observation should be made on the mode of inflicting this punishment.

It is generally supposed that the surgeon who is present at a military execution, is responsible for its consequences; this is not legally true, and it is physiologically impossible; the punishment is too uncertain in its operation to allow of any medical assistant's ascertaining the boundaries of danger; moral feeling, age, strength, nervous irritability, climate, previous disease, organic defects, and other circumstances, many of which it would be impossible for the most skilful to detect, and least of all by mere view of the

(*a*) In this opinion we are further confirmed by the debate in the House of Commons, March 1823, on the case of Colonel *Allen*.

culprit tied up to the halberts, may render a punishment fatal, which had been intended to be lenient. No surgeon therefore can answer, either for the ultimate, or immediate consequences of this species of corporal punishment; he may indeed err on the safe side, by interposing as early as possible, (*a*) but there is no criterion by which he can be guided in forming an absolute opinion on the danger or safety of the punishment.

But though the surgeon cannot be held criminally responsible (except in cases of gross ignorance or negligence) for the result of such executions, yet, if the commanding officer permits a single lash to be inflicted after the medical attendant has interposed, he would be held guilty of murder should the soldier die from the effects of excessive punishment; for malice will be presumed from such continuance after due notice. (*b*) In the notorious case of Governor *Wall*, who was executed for the murder of a soldier by excessive and illegal flogging; the punishment was originally unlawful, having been inflicted without sentence of a court martial, the mode of infliction was unusual, and the surgeon was stated to have been so much intimidated, that he was afraid to interfere, (a poor excuse for neglect of professional duty); under these circumstances, the plea that the deceased killed himself by excessive drinking, though the fact was

(*a*) We have heard of Martinets of the old school who have reprimanded their surgeons for such interference; we hope the instances are rare.

(*b*) No person ought to be entrusted with the execution of any sentence, who has been personally offended by the crime committed; for this reason the commanding officer of a regiment, who has a direct personal interest in the preservation of its discipline, and therefore may entertain angry feelings towards offenders, is not the most proper person to superintend executions.

far from improbable under the climate of *Goree*, was unavailable; the illegal flogging was the primary cause of the death, and therefore neither the effect of climate, misconduct, or mismanagement, could remove the original criminality. In this as in several other cases of death from ill-usage, it is a constant but unavailing plea that the deceased died not of the wounds or blows, but of fever, or defective treatment. (*a*)

On the subject of the tread-mill, we are not enabled to pronounce any very decided opinion, the invention has not been in use long enough to determine with any degree of accuracy its merits or defects; that it is held in considerable dread by offenders is certain, and the fear of returning to it may operate favourably on that class for which it appears best calculated, the regular vagabond; but it does not give any habit of industry, or teach any mode of labour to the merely idle or casually culpable, and therefore ought not to be indiscriminately applied to all cases. The punishment too is one of the most unequal in its operation that can be conceived; a man, who has been accustomed to running up stairs all his life, with good lungs and muscular legs, will scarcely suffer by it; while an asthmatic tailor, weaver, or other sedentary artizan will be half killed by the exercise. For women in certain stages, whether of menstruation or pregnancy, it is a dangerous and indecent torture, one which should immediately be forbidden, if not by the humanity of magistrates, by the wisdom of the legislature.

(*a*) This species of defence was set up in the case of *M'Quirk*, who was pardoned for the murder of *George Clarke* at a contested election, for Middlesex, (see *Foote's* Remarks.) We have again to report that precedents ought not to be drawn from times of turbulence or political dissention.

One very material objection to this machine arises out of the probability of abuse in the places where it is generally erected; an air of mystery has been thrown round houses of correction, which has acquired for some of them the odious name of bastile; even grand juries have been denied admission to them, on the ground that they are the prisons of the magistrates, not of the sheriff; we certainly do not understand either the policy or propriety of this distinction; that they should not be thrown open to the idle or merely curious we are ready to admit, but contend that they should be open to all official inspection; much must in every prison depend on the conduct and discretion of the jailors—to know that he is open to public animadversion is the best security for the due exercise of his office: a contrary assurance is well calculated to produce despotic feeling in ordinary minds; how much more then is it to be guarded against, when persons of the lower class are entrusted with extraordinary power of coercion, and are continually irritated by the refractory conduct of those who are placed under their authority. In such cases constant inspection, at uncertain times, and by *uninterested* persons, is the best guarantee against abuse.

FINIS.

POSTSCRIPT.

While this work was in the press several circumstances have occurred which it may be necessary to notice; first, as respecting the corporate medical bodies, His Majesty has been pleased to confer additional honors on the President of the College of Physicians, for which see the Preface;—the College itself is about to be removed from their late house in Warwick Lane to a more convenient site among the new buildings of Pall Mall East. A new charter has been granted to the College of Surgeons, but as it is not yet confirmed by Act of Parliament, it does not materially vary the public right of the College, or supply what was wanting in their jurisdiction. The Apothecaries' Company have very properly exerted their powers under the Act of 55 *Geo.* iii, for punishing illegal practice (*a*)

The Marriage Act which is incidentally referred to, vol. i, p. 169, is in part repealed by an act of the last session, which in turn is about to be amended or repealed in the present. The *Portsmouth case, adhuc sub judice*, affords some curious illustrations on the subjects of impotence and insanity.

The impolitic duty on salt has been lowered to one-seventh of its former amount. An act has been passed to prevent nuisances by gas-water; (*vol.* i, *p.* 339) and another for regulating the sale of Bread; (*vol.* i, *p.* 375) to these we must refer our readers for the modification or correction of our former remarks on the several subjects connected with them.

(*a*) See *Apoth. Comp.* v. *Warburton*, 3 *Barn.* & *Ald.* 46; *Apoth. Comp.* v. *Roby*, K. B. Feb. 28, 1822; *Apoth. Comp.* v. *Barstow*, York assizes Aug. 1822.

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APPENDIX

TO

PART I.

STATUTES AND CHARTERS.

STATUTE.

9 *Hen.* 5.

[Cited by Sir Wm. Browne in his Vindication of the College of Physicians. Quarto, London 1753]

Ex Bundello petitionum de an°. 9°. H. 5. in Parliamento.

Hey and most mighty prince noble and worthy lords spirituelx and temporelx and worshipfull comunes, for so moche as a man hath thre things to governe, that is to say soule, body, and worldly goods, the which ought and shulde ben principaly reweled by thre sciences, that ben divinitie, fisyk, and lawe, the soule by divinitie, the body by fisyk, worldly goods by lawe, and those conynges should be used and practised principally by the most connyng men in the same sciences, and most approved in cases necessaries to encrese of virtue, long life, and gouds of fortune, to the worship of God and comyn profit.

But worthi soveraines hit is known to your hey discretion, meny uncunning and unaproved in the aforesaide science practiseth, and specialy in fysyk, so that in this realme is

every man be he never so lewed taking upon him practice y suffered to use it to grete harm and slaughtre of many men, where if no man practiced therein but al only connynge men and approved sufficiently y learned in art, filosofye, and fysyk, as it is kept in other londes and roialmes ther shuld many man that dyeth for defaute of helpe lyve, and no man perish by unconning.

Wherefore pleseth to your excellents wysdomes that ought after your soule have no entendance to youre body for the causes abovesaid, to ordaine and make in statute perpetually to be straitly y used and kept. That no man of no manner, estate, degre, or condition, practice in fysyk fro this time forward, bot he have long time y used the scoles of fysyk, having letters testimonialx sufficianty of on of those degrees in the universite in which he took his degree in, under payne of long imprisonement and paying xl lb to the king, and that no woman use the practice of fysyk under the same payne, and that the sherreffs of every shire make inquisition in their tournes if there be any that forfaiteth agens this statuit under a payne reasonable, and thenne that they put this statute in execution without any favoure under the same payne; also lest that they the which ben able to practise in fisyk ben excluded fro practise, the which be not graduated. Pleseth to your hey prudency to send writtes to all the sherriffs of England, that every practysour in fisyk not graduated in the same science, that wole practise forth be wythin on of the universities of this lond by a certain day, that thay that ben able mowe aftre true and strayt examination be received to their degree, and that they that be not able to cese fro the practise into the time they ben able and approved, or for to never more entermete thereof, and that herto also be y set a peyne convenient.

Dorso.

Responsio hujus petitionis patet in rotulo parliamento dat. 2. dic maij anno regni regis Henr. 5ti. post conquestum nono.

Rot. Parl. 9. H. 5. p. 1. N°. 11.

Lordinance encontre les entremettours de fysyk et de Surgerie.

Item pur ouster meschieves et perils qe longement ont continuez dedains le roialme entre les gentz par my ceux quont usez larts et le practik de fisik et surgerye pretendantz foi' bien et sufficeaument apris de mesmes les arts on de verite non pas estes a grand deceite a le people. Si est ordeinez et assentuz en ceste parlement qe les seigneurs du counseil du roy pur le temps esteantz aient poair per anctoritie de mesme le parlement de faire et mettre tielle ordinaunce et punissement envers ceux persones qe desore evanant vorrant entremetter et user le practik des dits arts et ne sont my hables ne approves en ycelles come app'ent as mesmes les arts cesstasavoir ceux de fisyk en les universities et les surgeons entre les mestres de cell arte et ceo come semblera as ditz seigneurs les plus convenables et necessarie en le cas selonc lour bon advis et discretions pur le surete de le people.

STATUTE.

3. *Hen.* 8. *c.* 11.

An Act for the appointing Physicians and Surgeons.

'To the King our Sovereign Lord, and to all the 'Lords Spiritual and Temporal and Commons in this present 'Parliament assembled. Forasmuch as the Science & Cunning 'of Physick & Surgery (to the perfect knowlege whereof be 'requisite both great Learning and ripe Experience) is daily 'within this Realm excercised by a great multitude of ignorant

'Persons, of whom the great part have no manner of Insight 'in the same, nor in any other Kind of Learning; some also 'can no Letters on the Book, so far forth, that common 'Artificers, as Smiths, Weavers, and Women boldly and 'accustomably take upon them great Cures, and Things of 'great Difficulty, in the which they partly use Sorcery and 'Witchcraft, partly apply such Medicines unto the Disease 'as be very noious, and nothing meet therefore, to the high 'Displeasure of God, great Infamy to the Faculty, and the 'grievous Hurt, Damage, and Destruction of many of the 'King's liege People, most especially of them that cannot 'discern the uncunning from the cunning:' Be it therefore (to the Security and Comfort of all manner People) by the Authority of this present Parliament enacted, That no Person within the City of *London*, nor within Seven Miles of the same, take upon him to exercise and occupy as a Physician or Surgeon, except he be first examined, approved, and admitted by the Bishop of *London*, or by the Dean of *Paul's*, for the time being, calling to him or them Four Doctors of Physick, and for Surgery other expert Persons in that Faculty, and for the first Examination such as they shall think convenient, and afterward alway Four of them that have been so appointed, upon the Pain of Forfeiture for every Month that they do occupy as Physicians or Surgeons, not admitted nor examined after the Tenour of this Act, of *v. li.* to be imployed the one Half thereof to the Use of our Sovereign Lord the King, and the other Half to any Person that will sue for it by Action of Debt, in which no Wager of Law nor Protection shall be allowed.

II. And over this, That no Person out of the said City, and Precinct of Seven Miles of the same, except he have been (as is aforesaid) approved in the same, take upon him to exercise and occupy as a Physician or Surgeon, in any Diocese within this Realm, but if he be first examined and approved by the Bishop of the same Diocese, or, he being out of the Diocese, by his Vicar General; either of them calling to them such expert Persons in the said Faculties, as

their discretion shall think convenient, and giving their Letters Testimonials under their Seal to him that they shall so approve, upon like pain to them that occupy the contrary to this Act (as is above said) to be levied and imployed after the Form before expressed.

III. Provided alway, That this Act, nor any thing therein contained, be prejudicial to the Universities of *Oxford* or *Cambridge*, or either of them, or to any Privileges granted to them. *Memorand.* That 'Surgeons be comprised in this Act like as Physicians, for like mischief of ignorant Persons presuming to exercise Surgery.'

STATUTE.

5. *Hen.* 8. *c.* 6.

An Act concerning Surgeons to be discharged of Quests and other things.

'Sheweth unto your discreet Wisdoms, your Humble Orators the Wardens and Fellowship of the Craft and Mystery of Surgeons enfranchised in the City of *London*, not passing in number Twelve Persons, that whereas they and their Predecessors, from the time that no mind is to the contrary, as well in this noble City of *London*, as in all other Cities and Boroughs within this Realm or elsewhere, for the continual Service and Attendance that they daily and nightly, at all Hours and Times, give to the King's liege People, for the Relief of the same, according to their Science, have been exempt and discharged from all Offices and Business wherein they should use or bear any manner of Armour or Weapon, and with like Privilege have been intreated as Heralds of Arms, as well in Battles and Fields, as other places, therefore to stand unharnessed and unweaponed, according to the Law of Arms, because they be

'Persons that never used Feats of War nor ought to use, 'but only the Business and Exercise of their Science, to the 'Help and Comfort of the King's liege People in the time 'of their Need: And in the aforesaid City of *London*, from 'the time of their first Incorporation, when they have been 'many more in number than they now be, were never called 'nor charged to be on Quest, Watch, nor other Office, where-'by they should use or occupy any Armour or defenceable 'Geer of War, where through they should be unready, and 'letted to practice the Cure of Men being in Peril;' Therefore for that there be so small Number of the said Fellowship of the Craft and Mystery of Surgeons, in regard of the great Multitude of Patients that be, and daily chance, and infortune happeneth and increaseth in the foresaid City of *London*, and that many of the King's liege People suddenly wounded and hurt, for Default of Help in Time to them to be shewed, perish, and so divers have done, as evidently is known, by occasion that your said Suppliants have been compelled to attend upon such Constableship, Watches and Juries, as is aforesaid; be it enacted and established by the King our Sovereign Lord, and the Lords Spiritual and Temporal, and by the Commons, in the present Parliament assembled, and by Authority of the same, That from henceforth your said Suppliants be discharged, and not chargeable of Constableship, Watch, and of all manner of Office bearing any Armour, and also of all Inquests and Juries within the City of *London*: And also that this Act in all things do extend to all Barber Surgeons admitted and approved to exercise the said Mystery of Surgeons, according to the Form of the Statute lately made in that Behalf, so that they exceed not, nor be at one time above the number of Twelve Persons.

STATUTE.

14 *and* 15 *Hen.* 8. *c.* 5.

The Privileges and Authority of Physicians in *London.*

‘ In the most humble wise shew unto your Highness, ‘ your true and faithful Subjects and liege Men *John Cham-* ‘ *bre*, *Thomas Linacre*, *Ferdinandus de Victoria*, your Phy- ‘ sicians, and *Nicholas Halsewell*, *John Frances*, and *Robert* ‘ *Yaxley*, and all other men of the same Faculty within the ‘ City of *London*, and Seven Miles about, that where your ‘ Highness (by your most gracious Letters Patent bearing ‘ date at *Westminster*, the xxiii Day of *September*, in the ‘ tenth year of your noble Reign) for the Commonwealth ‘ of this your Realm, in due exercising and practising of ‘ the Faculty of Physick, and the good Ministration of ‘ Medicines to be had, hath incorporate and made of us, ‘ and of our Company aforesaid one Body and Perpetual ‘ Commonalty or Fellowship of the Faculty of Physick, and ‘ to have perpetual Succession and common Seal, and to ‘ choose yearly a President of the same Fellowship and ‘ Commonalty, to oversee, rule and govern the said Fel- ‘ lowship and Commonalty, and all men of the same Faculty, ‘ with divers other Liberties and Privileges by your High- ‘ ness to be granted for the Common Wealth of this your ‘ Realm, as in your said most gracious Letters Patents more ‘ at large is specified and contained, the Tenour whereof ‘ followeth in these Words:—

[*The Charter of Incorporation*].

“ Henricus Dei Gratia Rex Angliæ & Franciæ “ & Dominus Hiberniæ, omnibus ad quos præsentes “ literæ pervenerint salutem. Cum regii officii nostri

" munus arbitremur ditionis nostræ hominum fælici-
" tati omni ratione consulere ; id autem vel impri-
" mis fore, si improborum conatibus tempestive oc-
" curamus, apprime necessarium duximus improbo-
" rum quoque hominum, qui medicinam magis aviri-
" tiæ suæ causa, quam ullius bonæ conscientiæ fidu-
" cia, profitebuntur, unde rudi & credulæ plebi
" plurima incommoda oriantur, audaciam compes-
" cere : Itaque partim bene institutarum civitatum
" in Italia, & aliis multis nationibus, exemplum imi-
" tati, partim gravium virorum doctorum Joannis
" Chambre, Thomæ Linacre, Ferdinandi de Victoria,
" Medicorum nostrorum, Nicholai Halsewel, Joannis
" Francisci & Rob Yaxley, medicorum, ac præcipuc
" reverendissmi in Christo patris, ac domini, dom
" Thomæ tituli Sanctæ Ceciliæ trans Tiberim sacro-
" sanctæ Romanæ ecclesiæ presbyteri cardinalis,
" Eboracencis archiepiscopi & regni nostri Angliæ
" cancellarii clarissimi, precibus inclinati, collegium
" perpetuum doctorum & gravium virorum, qui me-
" dicinam in urbe nostra Londino & suburbis, in-
" traque septem millia passuum ab ea urbe quaqua
" versus publice exerceant, institui volumus atque
" imperamus. Quibus tum sui honoris, tum publicæ
" utilitatis nomine, curæ (ut speramus) erit, mali-
" tiosorum quorum meminimus inscientiam temeri-
" tatemque, tam suo exemplo gravitateque, suis de-
" terrere, quam per leges nostras nuper editas, ac
" per constitutiones per idem collegium condendas,
" punire. Quæ quo facilius rite peragi possint, me-
" moratis doctoribus Joan Chambre, Thomæ Linacre,
" Ferdinando de Victoria, medicis nostris, Nicholao
" Halsewel, Joanni Francisco, et Rob Yaxley, me-
" dicis, concessimus, quod ipsi, omnesque homines
" ejusdem facultatis de & in civitate prædicta, sint

" in re & nomine unum corpus et communitas per-
" petua sive collogium perpetuum; & quod eadam
" communitas sive collegium singulis annis in per-
" petuum eligere possint & facere, de communitate
" illa aliquem providum virum, & in facultate
" medicinæ expertum, in præsidentem ejudem col-
" legii sive communitatis, ad supervidend' recog-
" noscend' & gabernand' pro illo anno collegium
" sive communitatem præd' & omnes homines ejus-
" dem facultatis & negotia eorundem. Et quod
" idem præsidens & collegium sive communitas ha-
" beant successionem perpetuam & commune sigil-
" lum negotiis dict' communitatis & præsidentis in
" perpetuum serviturum. Et quod ipsi & succes-
" sores sui in perpetuum sint personæ habiles &
" capaces ad perquirendum & possidendum in feodo
" & perpetuitate terras & tenementa, reditus, & alias
" possessiones quascunque."

" Concessimus etiam eis & successoribus suis pro
" nobis & hæredibus nostris, quod ipsi et successores
" sui possint perquirere sibi & successoribus suis,
" tam in dicta urbe quam extra, terras et tenementa
" quæcunque annuum valorem duodecim librarum
" non excedent', Statuto de Alienatione ad manum
" mortuum non obstante. Et quod ipsi per nomina
" præsidentis & collegii seu communitatis facultatis
" medicinæ Lond' placitari & implaciteri possint
" coram quibuscunque judicibus in curiis et actioni-
" bus quibuscunque. Et quod præd' præsidens et
" collegium sive communitas, et corum successores,
" congregationes licitas & honestas de seipsis, ac
" stat' & ordinationes pro salubri qubernatione,
" supervisu et correctione collegii seu communitatis
" præd' & omnium hominum eandem facultatem in
" dicta civitate, seu per septem milliaria in circuitu

" ejusdem civitatis exercend' secundum necessitatis " exigentiam, quoties et quanda opus fuerit, facere " valeant licite et impune, sine impedimento nostri, " hæredum, vel successorum nostrorum, justitiario- " rum, escaetorum, vicecomitum, & alior' balivor' " vel ministror' nostror' hœred' vel successor' " nostror' quorumcunque. Concessimus etiam eis- " dem præsidenti & collegio, seu communitati, et " successoribus suis, quod nemo in dicta civitate aut " per septem miliaria in circuitu ejusdem, exerceat " dictam facultatem nisi ad hoc per dict' præsiden- " tem & communitatem, seu successores eorum, qui " pro tempore fuerint, admissus sit per ejusdem præ- " sidentis & collegii literas sigillo suo communi " sigillatas, sub pœna centum solidorum pro quoli- " bet mense, quo non admissus eandem facultatem " exercuit, dimidium inde nobis & hœred' nostris, " & dimidium dicto præsidenti & coll applicandum."

" Præterea volumus & concedimus pro nobis et " successoribus nostris (quantum in nobis) est quod " per præsidentem & collegium præd' communitatis " pro tempore existen' & eorum successores in per- " petum, quatuor singulis annis eligantur, qui ha- " beant supervisum & scrutinium, correctionem & " qubernat' omnium & singulor' dictæ civitatis me- " dicorum utentium facultate medicinæ in eadem " civitate, ac aliorum medicorum forinsecorum quo- " rumcunque facultatem illam medicinæ aliquo modo " frequentantium & utentium infra eandem civitatem " & suburbia ejusdem, sive intra septem miliaria " in circuitu ejurd' civitatis, ac punitionem eorund' " pro delictis suis in non bene exequendo faciendo, " & utendo illa; nec non supervisum & scrutinium " omnimodarum medicinarum & earum reception' " per dictos medicos, seu aliquem eorum, hujusmodi

" ligeis nostris pro eorum infirmitatibus curandis &
" sanandis, dandis, imponendis, & utendis, quoties
" et quando opus fuerit pro commodo & utilitate
" eorundem ligeorum nostrorum; ita quod punitio
" hujusmodi medicorum utentium dicta facultate
" medicinæ, sic in præmissis delinquent' per fines,
" amerciamenta, & imprisonamenta corpor' suor'
" & per alias vias rationab' & congruas exequatur.

" Volumus etiam & concedimus pro nobis, hære-
" dibus et successoribus nostris (quantum in nobis
" est,) quod nec præsidens, nec aliquis de collegio
" præd' medicorum, nec successores sui, nec eorum
" aliquis exercens facultatem illam; quoquo modo
" in futur' infra civitatem nostram præd' et subur-
" bia ejusdem, seu alibi, summoneantur aut ponantur
" neque eorum aliquis summoneatur aut ponatur
" in aliquibus assisis, juratis, inquestis, inquisition-
" ibus, attinctis, & aliis recognitionibus infra dictam
" civitatam & suburbia ejusdem, imposterum coram
" majore ac vicecom' seu coronatoribus dictæ civi-
" tatis nostræ pro tempore existend' capiendis aut
" per aliquem officiarium seu ministrum suum, vel
" officiarios sive ministros suos summonned', licet
" eædem juratæ, inquisitiones, seu recognitiones
" summon' fuerint super brevi vel brevibus nos-
" tris, vel hœredum nostroum, de recto; sed quod
" dicti magistrati, sive qubernatores, ac communitas
" facultatis antidictæ & successores sui, & eorum
" quilibet dictam facultatem exercentes versus nos,
" hæredes, et successores nostros, ac versus majorem
" et vicecomites civitatis nostræ præd' pro tempore
" existen' & quoscunque officiarios et ministros suos
" sint inde quieti, & penitus exonorati in perpetuum
" per præsentes."

" Proviso quod litteræ nostræ, seu aliquid in eis

" content' non cedent in præjudicium civitatis nos-
" træ Lond' seu libert' ejusd' & hoc absque fine
" seu feodo pro præmissis, seu sigillat' præsentium
" nobis facienda, solvenda, vel aliqualiter reddenda,
" aliquo statuto, ordinatione, vel actu in contrarium
" ante hoc tempora facto, edito, ordinato, seu proviso
" in aliquo non obstante. In cujus rei testimonium
" has litteras nostras fieri fecimus patentes. Teste
" meipso apud Westmonasterium xxiij. die Sept' an'
" reg' nostri x."

Per ipsum Regem

" Et de data præd' authoritate Parl. TUNSTALL.

' And forasmuch that the making of the said Corpo-
' ration is meritorious, and very good for the Common
' Wealth of this your Realm, it is therefore expedient and
' necessary to provide, That no Person of the said Politick
' Body and Commonalty aforesaid, be suffered to exercise
' and practice Physick, but only those Persons that be pro-
' found, sad, and discreet, groundly learned, and deeply
' studied in Physick.

' In consideration whereof, and for the further autho-
' rising of the same Letters Patents, and also enlarging of
' further Articles for the said Common Wealth to be had
' and made:' Pleaseth it your Highness, with the assent of your Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, to enact, ordain, and establish, That the said Corporation of the said Commonalty and Fellowship of the Faculty of Physick aforesaid, and all and every Grant, Article, and other Thing, contained and specified in the said Letters Patents, be approved, granted, ratified, and confirmed in the present Parliament, and clearly authorized and admitted by the same, good, lawful, and available to your said Body Corporate, and their Successors for ever, in as ample and large manner as may be taken, thought, and construed by the

same; and that it please your Highness, with the assent of your said Lords Spiritual and Temporal and the Commons in this your present Parliament assembled, further to enact, ordain, and establish, That the Six Persons beforesaid in your said most gracious Letters Patents named as Principals, and first named of the said Commonalty and Fellowship, choosing to them Two more of the said Commonalty, from henceforward to be called and cleaped *Elects*; and that the same Elects yearly choose One of them to be President of the said Commonalty, and as oft as any of the Rooms and Places of the same Elects shall fortune to be void, by Death or otherwise, then the Survivors of the said Elects (within Thirty or Forty Days next after the Death of them or any of them) shall choose, name and admit One or mo, as need shall require, of the most cunning and expert Men, of and in the said Faculty in *London*, to supply the said Room and Number of Eight Persons; so that he or they that shall be so chosen, be first by the said Survivors strictly examined after a Form devised by the said Elects, and also by the same Survivors approved.

And where that in Dioceses in *England*, out of *London*, it is not light to find alway Men able sufficiently to examine (after the Statute) such as shall be admitted to exercise Physick in them, that it may be enacted in this present Parliament, That no Person from henceforth be suffered to exercise or practice in Physick through *England*, until such time as he be examined at *London*, by the said President, and three of the said Elects; and to have from the said President or Elects, Letters Testimonials of their approving and Examination, except he be a Graduate of *Oxford* or *Cambridge*, which hath accomplished all things for his Form, without any Grace.

32. *Hen.* 8. *c.* 40.

For Physicians and their Privilege.

'In most humble wise sheweth unto your Majesty, 'your true and faithful Subjects and liege Men, the President 'of the Corporation of the Commonalty and Fellowship of the 'Science and Faculty of Physick in your City of *London*, 'and the Commons and the Fellows of the same, that whereas 'divers of them many times having in Cure, as well some of 'the Lords of your most honourable Council, and divers 'Times many of the Nobility of this Realm, as many other 'of your faithful and liege People, cannot give their due 'Attendance to them, and other their Patients, with such 'Diligence as their Duty were, and is to do by reason they be 'many Times compelled, as well within the City of *London* 'and Suburbs of the same, as in other Towns and Villages, to 'keep Watch and Ward, and be chosen to the Office of Con-'stable, and other Offices within the said City and Suburbs 'of the same, as in other Places within this your Realm, to 'their great Fatigation and Unquieting, and to the Peril of 'their Patients, by reason they cannot be conveniently 'attended:' It may therefore please your most excellent Majesty, with the Assent of your Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by Authority of the same, to enact, ordain, and establish, That the President of the said Commonalty and Fellowship for the Time being, and the Commons and Fellows of the same, and every Fellow thereof, that now be, or at any time hereafter shall be, their Successors, and the Successors of every of them, at all time and times after the making of this present Act, shall be discharged to keep Watch or Ward in your said City of *London*, or the Suburbs of the same, or any Part thereof; and that they or any of them shall not be chosen Constable, or any other Officer in the said City or Suburbs; and that if at any time hereafter said President for the time being, or any of the said

Commons or Fellows for the time being, by any Ways or Means be appointed or elected to any Watch or Ward Office of Constable, or any other Office, within the said City or Suburbs, the same Appointment or Election to be utterly void and of none Effect; any Order, Custom, or Law to the contrary before this Time used in the said City notwithstanding.

II. And that it may please your most Royal Majesty, by the Authority aforesaid, That it may be further enacted, ordained and established, for the common Wealth and Surety of your loving Subjects of this your Realm, in and for the Administration of Medicines to such of your said Subjects as shall have Need of the same, That from henceforth the said President for the Time being, Commons and Fellows, and their Successors may yearly at such time as they shall think most meet and convenient for the same, elect and choose four Persons of the said Commons and Fellows, of the best learned, wisest and most discreet, such as they shall think convenient, and have Experience of the said Faculty of Physick, and that the said four Persons so elected and chosen, after a corporal Oath to them ministered by the said President or his Deputy, shall and may, by virtue of this present Act, have full Authority and Power, as often as they shall think meet and convenient, to enter into the House or Houses of all and every Apothecary, now or at any time hereafter using the Mystery or Craft of Apothecary within the said City, only to search, view and see such Apothecary Wares, Drugs and Stuffs, as the said Apothecaries or any of them have, or at any time hereafter shall have, in their House or Houses; and all such Wares, Drugs and Stuffs, as the said four Persons shall then find defective, corrupted, and not meet nor convenient to be ministered in any medicines for the Health of Man's Body, the same four Persons calling to them the Warden of the said Mystery of Apothecaries within the said City for that time being, or one of them, shall cause to be brent or otherwise destroy the same, as they shall think meet by their

discretion; and if the said Apothecaries or any of them at any time hereafter do obstinately or willingly refuse or deny the said four Persons yearly elected and chosen, as is before said, to enter into their said House or Houses for the Causes, Intent and Purpose before rehearsed; that then they and every of them so offending contrary to this Act, for every time that he or they do so offend, to forfeit C. *s.* the one Half to your Majesty and the other Half to him that will sue for the same by Action of Debt, Bill, Plaint or Information, in any of the King's Courts, wherein no Wager of Law, Essoin or Protection shall be allowed; and if the said four Persons or any of them so elected and chosen as before is said, do refuse to be sworn, or after his said Oath to him or them administered, do obstinately refuse to make the said Search and View once in the Year, or at such time as they shall think most convenient by their Discretions, having no lawful impediment by Sickness or otherwise, to the contrary; that then for every such wilful and obstinate Default, every of the said four Persons making Default to forfeit forty Shillings.

III. And forasmuch as the Science of Physic doth comprehend, include and contain the knowledge of Surgery, as a special Member and Part of the same, therefore be it enacted, That any of the said Company or Fellowship of Physicians, being able chosen and admitted by the said President and Fellowship of Physicians, may from time to time, as well within the City of *London*, as elsewhere within the Realm, practice and exercise the said Science of Physic in all and every his Members and Parts, any Act, Statute, or Provision made to the contrary notwithstanding.

STATUTE.

32. *Hen.* 8. *c.* 42.

For Barbers and Surgeons.

'The King our Sovereign Lord, by the advice of the 'Lords Spiritual and Temporal and the Commons, in this 'present Parliament assembled, and by the Authority of 'the same, by all their common Assents, duly pondering 'among other Things necessary for the Common Wealth of 'this Realm, that it is very expedient and needful to pro-'vide for Men expert in the Science of Physick and 'Surgery, for the Health of Man's Body, when Infirmities 'and Sickness shall happen, for the due Exercise and 'Maintenance whereof good and necessary Acts be already 'made and provided; yet nevertheless, forasmuch as within 'the City of *London*, where Men of great Experience, as 'well in Speculation as in Practice of the Science and 'Faculty of Surgery, be abiding and inhabiting, and have 'more commonly the daily Exercise and Experience of the 'same Science of Surgery, than is had or used within other 'Parts of this Realm; and by occasion thereof many expert 'Persons be brought up under them as their Servants, 'Apprentices and others, who by the Exercise and diligent 'Information of their said Masters, as well now as hereafter, 'shall exercise the said Science within divers other parts of 'this Realm, to the great Relief, Comfort and Succour of 'much People, and to the sure Safeguard of their bodily 'Health, their Limbs and Lives; and forasmuch as within 'the said City of *London*, there be now two several and 'distinct Companies of Surgeons, occupying and exercising 'the said Science and Faculty of Surgery, the one Company 'being called *The Barbers of London*, and the other 'Company called *The Surgeons of London*, which Com-'pany of Barbers be incorporated to sue and be sued by the

'Name of Masters or Governors of the Mystery or Commonalty of the Barbers of *London*, by Virtue and Authority 'of the Letters Patents under the Great Seal of the late 'King of famous Memory, King *Edward* the Fourth, dated 'at Westminster the four and twentieth of *February*, in 'the first year of his Reign, which afterward, as well by 'our now most dread Sovereign Lord, as by the right noble 'and virtuous Prince King *Henry* the Seventh, Father unto 'the King's most excellent Highness now being, were and 'be confirmed, as by sundry Letters Patents thereof made, 'amongst other things in the same contained, more at large 'may appear; and the other Company called the Surgeons, 'be not incorporate, nor have any manner of Corporation; 'which two several and distinct Companies of Surgeons 'were necessary to be united, and made one Body incorporate, to the intent that by their Union and often 'assembly together, the good and due Order, Exercise, and 'Knowlege of the said Science or Faculty of Surgery should 'be as well in Speculation as in Practice, both to themselves, and all other their said Servants and Apprentices, 'now and hereafter to be brought up under them, and by 'their Learnings and diligent and ripe Informations, more 'perfect, speedy and effectual Remedy should be, than it 'hath been, or should be if the said two Companies of 'Barbers and Surgeons should continue severed asunder, 'and not joined together, as they before this time have 'been, and used themselves not medling together;' wherefore in consideration of the Premisses, be it enacted by the King our Sovereign Lord, and by the Lords Spiritual and Temporal, and by the Commons in this present Parliament assembled, and by the Authority of the same, That the said two several and distinct Companies of Surgeons, that is to say, both the Barbers and the Surgeons and every Person of them, being a Freeman of either of the said Companies after the Custom of the said City of *London*, and their Successors from henceforth, immediately be united and made one entire and whole body corporate and one Commonalty

perpetual, which at all times hereafter shall be called by the name of *Masters or Governors of the Mystery and Commonalty of Barbers and Surgeons of London*, for evermore, and by none other name; and by the same name to implead and be impleaded before all manner of Justices, in all courts, in all manner of Actions and Suits, and also to purchase, enjoy, and to take to them and to their Successors, all manner of Lands, Tenements, Rents, and other Possessions, whatsoever they be; and also shall have a Common Seal, to serve the business of the said Company and Corporation for ever, and by the same name peaceably, quietly, and indefeasably shall have, possess and enjoy to them and to their Successors for ever all such Lands and Tenements, and other Hereditaments whatsoever, which the said Company or Commonalty of Barbers have and enjoy to the Use of the said Mystery and Commonalty of Barbers of *London*; and also shall peaceably and quietly have and enjoy all and singular Benefices, Grants, Liberties, Privileges, Franchises and free Customs, and also all manner of other Things at any time given or granted unto the said Companies of Barbers or Surgeons by whatsoever name or names they or any of them were called, and which they or any of them now have, or any of their Predecessors have had, by Act of Parliament, Letters Patents, of the King's Highness, or other his most noble Progenitors, or otherwise by any lawful means have had at any time afore this present Act, in as large and ample Manner and Form as they or any of them have, had, might or should enjoy the same, this Union or Conjunction of the said Companies together notwithstanding; and as largely to have and enjoy the Premisses, as if the same were and had been specially and particularly expressed and declared with the best and most clearest Words and Terms in the Law, to all Intents and Purposes, and that all persons of the said Company now incorporate by this present Act, and their Successors, shall be lawfully admitted and approved to occupy Surgery, after the form of the Statute in that case ordained and provided

shall be exempt from bearing of Armor, or to be put in any Watches or Inquests; and that they and their Successors shall have the Search, Oversight, Punishment, and Correction, as well of Freemen as of Foreigners for such Offences as they or any of them shall commit or do against the good Order of Barbery or Surgery, as afore this Time among the said Mystery and Company of Barbers of *London* hath been used and accustomed, according to the good and politick Rules and Ordinances by them made, and approved by the Lord Chancellor, Treasurer and two chief Justices of either Bench, or any three of them after the Form of the Statute in that case ordained and provided.

II. And further be it enacted by the Authority aforesaid, That the said Masters or Governors of the Mystery and Commonalty of Barbers and Surgeons of *London* and their Successors yearly for ever, after their said Discretions, at their free Liberty and Pleasure, shall and may have and take without Contradiction four persons condemned, adjudged, and put to death for Felony by the due Order of the King's Laws of this Realm for Anatomies, without any further Suit or Labour to be made to the King's Highness, his Heirs or Successors of the same; and to make Incision of the same dead bodies, or otherwise to order the same after their said Discretions at their Pleasures for their further and better Knowledge, Instruction, Insight, Learning and Experience in the said Science or Faculty of Surgery; saving unto all Persons their Heirs and Successors all such Right, Title, Interest and demand which they or any of them might lawfully claim or have in or to any of the Lands and Tenements with the Appurtenances belonging unto the said Company of Barbers and Surgeons, or any of them, at any time afore the making of this Act, in as ample Manner and Form as they or any of them had or ought to have had heretofore; any Thing in this present Act comprised to the contrary hereof in any wise notwithstanding.

III. And forasmuch as such Persons using the Mystery or Faculty of Surgery, oftentimes meddle and take unto

their Cures and houses such sick and diseased Persons as been infected with the Pestilence Great Pox, and such other contagious Infirmities do use or exercise Barbery, as washing or shaving or other Feats thereunto belonging which is very perilous for infecting the King's liege People resorting to their Shops and houses there being washed or shaven: Wherefore it is now inacted, ordained and provided by the Authority aforesaid, That no manner of Person within the City of *London*, Suburbs of the same and one Mile Compass of the said City of *London*, after the feast of the Nativity of our Lord God next coming, using Barbery or Shaving or that hereafter shall use any Barbery or Shaving within the said City of *London*, Suburbs or one mile Circuit of the same City of *London*, he nor they nor none other for them, to his or their Use, shall occupy any Surgery, letting of blood, or any other thing belonging to Surgery; drawing of teeth only except. And furthermore in like manner whosoever that useth the Mystery or Craft of Surgery within the Circuit aforesaid as long as he shall fortune to use the said Mystery or Craft of Surgery, shall in no wise occupy nor exercise the Feat or Craft of Barbery or Shaving, neither by himself, nor by none other for him, to his use or their use: And moreover, that all manner of Persons using Surgery for the time being, as well Freemen as Foreigners, Aliens and Strangers within the said City of *London*, the Suburbs thereof, and one Mile compass of the said City of London, before the Feast of *St. Michael*, the Archangel next coming, shall have an open Sign on the Street side where they shall fortune to dwell, that all the King's liege People there passing by may know at all times, whither to resort for Remedies in Time of necessity.

IV. And further be it enacted by the Authority aforesaid, That no manner of Person after the said Feast of St. *Michael* the Archangel next coming, presume to keep any Shop of Barbery or Shaving within the City of *London*, except he be a Freeman of the same Corporation and Company.

V. And furthermore at such Times heretofore accustomed, there shall be chosen by the same Company four Masters or Governors of the same Corporation or Company, of the which four, two of them shall be expert in Surgery, and the other two in Barbery; which four Masters, and every of them, shall have full Power and Authority from Time to Time, during their said Office, to have the Oversight, Search, Punishment and Correction of all such Defaults and Inconveniences as shall be found among the said Company using Barbery or Surgery, as well of Freemen as Foreigners, Aliens or Strangers, within the City of *London* and the Circuits aforesaid, after their said Discretions; And if any Person or Persons using any Barbery or Surgery at any Time hereafter offend in any of these Articles aforesaid, that then for every Month the said Persons so offending shall lose, forfeit and pay *v. li.* the one Moiety thereof to the King our Sovereign Lord, and the other Moiety to any Person that will or shall sue therefore by Action of Debt, Bill, Plaint or Information in any of the King's Courts, where no Wager of Law, Essoin or Protection shall be admitted or allowed in the same.

VI. Provided that the said Barbers and Surgeons, and every of them, shall bear and pay Lot and Scot, and such other Charges as they and their Predecessors have been accustomed to pay within the said City of *London*; this Act nor any thing therein contained to the contrary hereof in any wise notwithstanding.

VII. Provided alway, and be it enacted by Authority aforesaid, That it shall be lawful to any of the King's Subjects, not being Barber or Surgeon, to retain have and keep in his House as his Servant any Person being a Barber or Surgeon, which shall and may use and exercise those Arts and Faculties of Barbery or Surgery, or either of them in his Master's House, or elsewhere by his Master's Licence or Commandment; any Thing in this Act above written to the contrary notwithstanding.

34. 35. *Hen.* 8. *c.* 8.

A Bill that Persons being no common Surgeons, may minister Medicines, notwithstanding the Statute.

'Where in the Parliament holden at *Westminster*, 'in the third year of the King's most gracious reign, 'amongst other things, for the avoiding Sorceries, Witchcraft, 'and other inconveniencies; it was enacted, That no Person 'within the City of *London*, nor within seven miles of the 'same, should take upon him to exercise and occupy as 'Physician or Surgeon, except he be first examined, approved 'and admitted by the Bishop of London, and others, under 'and upon certain Pains and Penalties, in the same Act 'mentioned: since the making of which Act, the Company 'and Fellowship of Surgeons of *London*, minding only their 'own lucres, and nothing the profit or ease of the Diseased 'or Patient, have sued, troubled, and vexed divers honest 'Persons, as well Men as Women, whom God hath endued 'with the knowledge of the nature, kind and operation of 'certain herbs, roots and waters, and the using and minis-'tering of them to such as been pained with customable 'Diseases, as Women's Breasts being Sore, a Pin and the 'Web in the eye, Uncomes of Hands, Burnings, Scaldings, 'Sore Mouths, the Stone, Stranguary, Saucelim, and 'Morphew, and such other like Diseases; and yet the said 'Persons have not taken any thing for their Pains or 'Cunning, but have ministered the same to poor People 'only, for Neighbourhood and God's sake, and of Pity and 'Charity; and it is well known, that the Surgeons admitted 'will do no cure to any Person, but where they shall know 'to be rewarded with a greater sum or reward than the 'cure extendeth unto; for in case they would minister their 'cunning unto sore People unrewarded, there should not so 'many rot, and perish to Death for lack or help of Surgery,

'as daily do; but the greatest part of Surgeons admitted 'been much more to be blamed, than those Persons that 'they trouble.'

'For although the most part of the Persons of the said 'Craft of Surgeons, have small cunning, yet they will take 'great Sums of Money, and do little therefore; and by 'reason thereof, they do oftentimes impair and hurt their 'Patients, rather than do them good.' In consideration whereof, and for the Ease, Comfort, Succour, Help, Relief, and Health of the King's poor Subjects, Inhabitants of this Realm, now pained or diseased, or that hereafter shall be pained or diseased.

Be it ordained, established, and enacted, by the Authority of this present Parliament, that at all time from henceforth, it shall be lawful to every Person being the King's Subject, having knowledge and experience of the nature of Herbs, Roots, and Waters, or of the operation of the same, by Speculation or Practice, within any part of the Realm of *England*, or within any other of the King's Dominions, to practise, use, and minister in and to any outward Sore, Uncome, Wound, Apostemations, outward Swellings or Disease, any Herb or Herbs, Ointments, Baths, Pultess, and Emplasters, according to their Cunning, Experience and Knowledge, in any of the Diseases, Sores, and Maladies beforesaid, and all other like to the same, or Drinks for the Stone, Stranguary or Agues, without Suit, Vexation, Trouble, Penalty, or loss of their Goods; the foresaid Statute in the foresaid third Year of the King's Most Gracious Reign, or any other Act, Ordinance, or Statute to the contrary heretofore made in anywise notwithstanding.

1. *Mary*, c. 9.

An Act touching the Corporation of Physicians in *London*.

'Whereas in the Parliament holden at *London*, the 'fifteenth Day of *April*, in the fourteenth year of the Reign 'of our late Sovereign Lord, King Henry the Eighth, and 'from thence adjourned to *Westminster*, the last day of *July*, 'in the fifteenth year of the Reign of the same king, and 'there holden, it was enacted, That a certain Grant of 'Letters Patents of Incorporation, made and granted by 'our said late king to the Physicians of *London*, and all 'Clauses and Articles contained in the same Grant, should 'be approved, granted, ratified and confirmed by the same 'Parliament.'

For the consideration thereof, be it enacted, by the Authority of this present Parliament, That the said Statute or Act of Parliament, with every Article and Clause therein contained, shall from henceforth stand and continue in full Strength, Force and Effect; any Act, Statute, Law, Custom, or any other thing made had or used to the contrary in any wise notwithstanding.

III. And for the better Reformation of divers Enormities happening to the Commonwealth, by the evil using and undue Administration of Physick, and for the enlarging of further Articles for the better Execution of the things contained in the said Grant enacted;

IV. Be it therefore now enacted, That whensoever the President of the College, or Communalty of the Faculty of Physick of *London*, for the time being, or such as the said President and College shall yearly, according to the Tenor and Meaning of the said Act, authorise to search, examine, correct and punish all Offenders and Transgressors in the said Faculty, within the same City and Precinct in the aid Act expressed, shall send or commit any such

Offender or Offenders for his or their Offences or Disobedience, contrary to any Article or Clause contained in the said Grant or Act, to any Ward, Gaol or Prison, within the same City and Precinct (the Tower of *London*, except) That then from time to time, the Warden, Gaoler or Keeper, Wardens, Gaolers, or Keepers of the Wards, Gaols and Prisons within the City or Precinct aforesaid, (except before excepted) shall receive into his or their Prisons all and every such Person and Persons so offending, as shall be so sent or committed, to him or them, as is aforesaid; and there shall safely keep the person or persons so committed, in any of their Prisons, at the proper Costs and Charges of the said Person or Persons so committed, without Bail or Mainprise, until such time as such Offender or Offenders or Disobedient be discharged of the said Imprisonment by the said President, and such Persons as by the said College shall be thereto authorised; upon Pain that all and every such Warden, Gaoler and Keeper, doing the contrary, shall lose and forfeit double of such Fine and Amerciament as such Offender and Offenders or Disobedients, shall be assessed to pay, by such as the said President and College shall authorise as aforesaid, so that the same Fine and Amerciament be not at any one time above the sum of xx li. the Moiety thereof to be employed to the use of our Sovereign Lady the Queen, her Heirs and Successors, the other Moiety unto the said President and College: all which forfeitures to be recovered by Action of Debt, Bill, Plaint, or Information, in any of the Queen's, her Heirs and Successor's Courts of Record, against any such Warden, Gaoler or Keeper so offending; in which Suit no Essoin, Wager of Law, nor Protection shall be allowed nor admitted for the Defendant.

V. And further, be it enacted by the Authority aforesaid, for the better Execution of the Search and view of Poticary Wares, Drugs and Compositions, according to the Tenor of a Statute made in the xxxii Year of the Reign of the said late King *Henry* the Eighth, That it shall be lawful for the

Wardens of the Grocers, or one of them, to go with the said Physicians in their View and Search, that if the said Warden or Wardens do refuse his or their coming thereunto, forthwith and immediately, when the said President or four of his College elect, as aforesaid, do call upon him or them, that then the said Physicians may and shall execute that Search and View, and the due Punishment of the Poticaries for any their evil and faulty Stuff, according to the Statute last before mentioned, without the Assistance of any of the said Wardens; any Clause in the aforenamed Statute to the contrary hereof notwithstanding. And every such Person or Persons as will or shall resist such Search, shall forfeit for every such resistance Ten Pound; the same Penalty to be recovered in Form aforesaid, without any of the delays aforesaid, to be had in suit thereof.

VI. And further, be it enacted, That all Justices, Mayors, Sheriffs, Bailiffs, Constables, and other Ministers and Officers, within the City and Precincts above written, upon Request to them made, shall help and assist the President of the said College, and all Persons by them from time to time authorised for the due Execution of the said Acts or Statutes, upon Pain for not giving of such Aid, Help, and Assistance, to run in Contempt of the Queen's Majesty, her Heirs and Successors.

6th & 7th *Will. 3. c. 4.*

An Act for exempting Apothecaries from serving the Offices of Constable, Scavenger, and other Parish and Ward Offices, and from serving upon Juries.

'Whereas the Act of the Apothecary is of great and 'general Use and Benefit, by reason of their constant and

'necessary Assistance of his Majesty's Subjects, which 'should oblige them solely to attend the Duty of their 'Professions; yet by reason that they are compelled to serve 'several Parish, Ward, and Leet Offices, in the Places 'where they live, and are frequently summoned to serve on 'Juries and Inquests, which take up great Part of their 'Time, they cannot perform the Trusts reposed in them as 'they ought, nor attend the Sick with such Diligence as is 'required: And whereas, King *James* the First, by His 'Letters Patents under the Great Seal of *England*, did 'incorporate the Apothecaries exercising that Art within '*London*, and seven Miles Compass, by the Name of '*The Master, Wardens, and Society of the Art and* '*Mystery of the Apothecaries of the City of London:*'

II. Be it therefore enacted, by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That all and every Person and Persons, using and exercising, or that hereafter shall use and exercise, the Art of an Apothecary within the said City of *London*, and seven Miles thereof, being Free of the said Society, and who already have been, or hereafter shall be duly examined of his Skill in the said Mystery, and shall be approved of for the same, and every of them, for so long as he or they shall use and exercise the said Art, and no longer, shall and may at all Times hereafter be freed and exempted from the several Offices of Constable, Scavenger, Overseer of the Poor, and all other Parish, Ward, and Leet Offices, and of and from the being put into or serving upon Juries or Inquests; and if at any Time hereafter any such Person or Persons using the said Art, and being qualified as aforesaid, shall be chosen or elected into any of the said Offices, or returned, required, or appointed to serve in any Jury, Leet, or Inquest, or be disquieted or disturbed by reason thereof, that then such Person or Persons, producing a Testimonial under the common Seal of the said Corporation, of such his

Examination, Approbation, and Freedom, to the Person or Persons by whom he shall be so elected or appointed, or by or before whom he shall be so summoned, returned, or required to serve or hold any of the said Offices or Duties, shall be absolutely discharged from the same, and such Nomination, Election, Return, and Appointment, shall be utterly void, and of none Effect; any Order, Custom, Law, or Statute, to the contrary in any wise notwithstanding.

III. And be it further enacted by the Authority aforesaid, That all Persons using and exercising, or that hereafter shall use and exercise the said Art of an Apothecary, within any other Parts of this Kingdom, Dominion of *Wales*, or Town of *Berwick* upon *Tweed*, and who have been brought up and served, or hereafter shall be brought up and serve in the said Art as an Apprentice, by the Space of seven years, according to the Statute of the fifth of Queen *Elizabeth*, shall likewise from henceforth be freed and exempted from all and singular the Offices and Duties aforesaid, within the several Counties, Cities, and Places, where they live and inhabit, for so long as he or they shall use and exercise the said Art, and no longer; and if any Person or Persons so qualified shall be elected or chosen into any of the said Offices, or returned to serve in any Jury, Leet, or Inquest, such Nomination, Election, Return, and Appointment, shall be void, unless such Person or Persons shall voluntarily consent and agree to hold such Office, or serve upon such Jury, Leet, or Inquest. Provided always, That nothing herein contained shall be construed to exempt or excuse any Apothecary that is or shall, before the commencement of this Act, be elected or appointed to serve any of the said Offices, from serving in the said Offices for the usual Time, for which he was so elected and appointed. Provided always, That this Act shall continue for the Space of seven Years, and from thence to the End of the next Session of Parliament, and no longer.

Continued by 1 Ann. st. 1. c. 11.

Made perpetual by 9 Geo. 1. c. 8. § 1.

10. *Geo.* 1. *c.* 20.

An Act for the better viewing, searching and examining of all Drugs, Medicines, Waters, Oils, Compositions, used or to be used for Medicines in all places where the same shall be exposed to sale or kept for that Purpose, within the City of *London* and Suburbs thereof, or within seven Miles Circuit of the said City.

[*This Act has expired.*]

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18. *Geo.* 2. *c.* 15.

An Act for making the Surgeons of *London* and the Barbers of *London* two separate and distinct Corporations.

'Whereas in and by certain Letters Patent, under 'the Great Seal of *England*, bearing Date the twenty-'fourth Day of *February* in the first Year of the Reign of 'his then Majesty King Edward the Fourth, after reciting, 'That the Freemen of the Mystery of Barbers of the City 'of *London*, using the Mystery or Faculty of Surgery, had 'for a long Time, exercised and sustained, and still con-'tinued to exercise and sustain great Application and 'Labour, as well about the curing and healing Wounds, 'Blows and other Infirmities, as in the letting of Blood, 'and drawing of Teeth; and that by the Ignorance and 'Unskilfulness of some of the said Barbers, as well Free-'men of the said City as of others, being foreign Surgeons, 'many misfortunes had happened to divers People, by the

'Unskilfulness of such Barbers and Surgeons, in healing 'and curing Wounds, Blows, Hurts and other Infirmities; 'and that it was to be feared, that the like or worse Evils 'might thereafter ensue, unless a suitable Remedy was 'speedily provided in the Premisses; his said then Majesty 'did therefore, at the Supplication of the Freemen of the 'said Mystery of Barbers, in the said City of *London*, grant 'to them, amongst other Things, that the said Mystery, 'and all the Men of the said Mystery of the said City, 'should be one Body, and one perpetual Community; and 'that two Principals of the same Commonalty, of the most 'expert Men in the Mystery of Surgery, might with the 'Assent of twelve, or eight Persons at the least, of the same 'Community, every Year elect and make out of the Com-'munity two Masters or Governors, being the most expert 'in the Mystery of Surgery, to oversee, rule and govern the 'Mystery and Commonalty aforesaid, and all Men of the 'same Mystery and the Affairs of the same; and that the 'aforesaid Masters or Governors, and Commonalty, and 'their Successors, might make Statutes and Ordinances for 'the Government of the said Mysteries; and that the 'Masters or Governors for the Time being, and their Suc-'cessors, should have the Survey, Search, Correction and 'Government of all the Freemen of the said City, being 'Surgeons, using the Mystery of Barbers in the same City, 'and of other Surgeons whatsoever, being Foreigners, 'practising and using the Mystery of Surgery, within the 'same City and Suburbs of the same, and the Punishment 'of them, as well Freemen as Foreigners, for their Offences 'in not perfectly executing, performing and using that 'Mystery; and should also have the Survey and Search of 'all Manner of Instruments, Plaisters and other Medicines, 'and the Receipts to be given, applied and used by the 'said Barbers and Surgeons, for the curing and healing of 'Sores, Wounds, Hurts and such like Infirmities; and that 'no Barber using the said Mystery of Surgery, within the 'said City, or Suburbs thereof, or other foreign Surgeon

‘ whatsoever, should be in any Manner thereafter admitted
‘ to execute, perform and exercise the same Mystery of
‘ Surgery, unless he had first been approved of, as well
‘ instructed in that Mystery, by the said Masters or Go-
‘ vernors, or their Successors, sufficiently qualified in that
‘ Behalf; and his said Majesty did further grant, that the
‘ said Masters or Governors of the Commonalty of the said
‘ Mystery of Barbers, and their Successors nor any of them,
‘ should in any Manner thereafter be summoned or put
‘ upon any Assizes, Juries, Inquests, Inquisitions, Attaints
‘ or other Recognizances, to be taken within the said City
‘ and Suburbs thereof, before the Mayor or Sheriffs, or
‘ Coroners of the same City for the Time being, or sum-
‘ moned by any of his Officer or Officers, Minister or
‘ Ministers, although such Juries, Inquisitions, or Recog-
‘ nizances, should be summoned upon a Writ or Writs of
‘ Right; but that the said Masters or Governors, and
‘ Commonalty of the aforesaid Mystery, and their Suc-
‘ cessors, and every of them, should be thereof acquitted,
‘ and wholly discharged for ever; and his said then Ma-
‘ jesty thereby further granted unto the aforesaid Masters
‘ or Governors, and Commonalty of the said Mystery of
‘ Barbers, and to their Successors the following Liberty;
‘ to wit, That they at all Times thereafter should and might
‘ admit Persons able and sufficiently learned and instructed
‘ in the said Mystery of Surgery, and by them approved of
‘ in Form, and presented to the Mayor of the said City
‘ for the Time being, and no other Persons, or in any other
‘ Manner, into the said Mystery of Barber Surgeons, and
‘ Liberty of the said City: And whereas by an Act of
‘ Parliament made and passed in the thirty-second Year
‘ of the Reign of the late King Henry the Eighth, intituled,
‘ *For Barbers and Surgeons*, after taking Notice that it
‘ was very expedient and needful to provide for Men expert
‘ in the Science of Physick and Surgery for the Health of
‘ Man's Body, when Infirmities and Sickness should happen;
‘ for the due Exercise and Maintenance whereof, good and

‘ necessary Acts had theretofore been made and provided,
‘ and that within the City of *London*, Men of great Ex-
‘ perience, as well in Speculation as in Practice of the
‘ Science and Faculty of Surgery, were abiding and in-
‘ habiting, and had more commonly the daily Exercise and
‘ Experience of the same Science of Surgery than was had
‘ and used within any Parts of the Realm; and by Occasion
‘ thereof, many expert Persons were brought up under them
‘ as their Servants, Apprentices and others, who by the
‘ Exercise and diligent Information of their Masters, might
‘ exercise the said Science within divers other Parts of the
‘ Realm; to the great Relief, Comfort and Succour of much
‘ People, and to the Safeguard of their bodily Health,
‘ Limbs and Lives; and reciting, That within the said City
‘ of *London* there were then two several and distinct Com-
‘ panies of Surgeons occupying and exercising the Science
‘ and Faculty of Surgery, the one Company being common-
‘ ly called *The Barbers of* London, and the other Company
‘ called *The Surgeons of* London; and that the said Com-
‘ pany of Barbers were incorporated to sue and be sued by
‘ the Name of *Masters or Governors of the Mystery or*
‘ *Commonalty of the Barbers of* London, by Letters Patent
‘ under the Great Seal of King Edward the Fourth, dated
‘ the twenty-fourth Day of *February* in the first Year of
‘ his Reign, and which were confirmed by several subsequent
‘ Letters Patents in the said Act mentioned and referred
‘ to; and that the other Company, called *The Surgeons*,
‘ had not any Manner of Corporation; and that the said two
‘ several and distinct Companies of Surgeons were necessary
‘ to be united and made one Body Corporate, to the Intent
‘ that by their Union and often Assembly together, the
‘ good and due Order, Exercise and Knowledge in the said
‘ Science or Faculty of Surgery, should be, as well in
‘ Speculation as in Practice, both to themselves and their
‘ Servants and Apprentices, and by their Learning and
‘ diligent and ripe Informations, more perfect, speedy and
‘ effectual; it was therefore enacted, That the said two

‘ several and distinct Companies of Surgeons, that is to say, ‘ both the Barbers and the Surgeons, and every Person of ‘ them, being a Freeman of either of the said Companies, ‘ after the Custom of the said City of *London*, and their ‘ Successors, should from thenceforth be immediately united ‘ and made one entire and whole Body Corporate, and one ‘ Commonalty perpetual, which at all Times thereafter ‘ should be called by the Name of *Masters or Governors of* ‘ *the Mystery or Commonalty of Barbers and Surgeons of* ‘ London, and by the same Name to implead and be im- ‘ pleaded before all Manner of Justices in all Courts, in all ‘ Manner of Actions and Suits; and also to purchase, enjoy, ‘ and take to them and their Successors, Lands, Tenements, ‘ Rents and other Possessions whatsoever: And it was also ‘ thereby enacted, That they should have a Common Seal ‘ to serve for the Business of the said Company and Corpo- ‘ ration; and that they should by the same Name, peace- ‘ ably, quietly and indefeazibly, have, possess, and enjoy, ‘ to them and their Successors for ever, all such Lands and ‘ Tenements, and other Hereditaments whatsoever, which ‘ the said Company or Commonalty of Barbers then had and ‘ enjoyed, to the Use of the said Mystery and Commonalty ‘ of Barbers of *London*; and should also peaceably and ‘ quietly have and enjoy all and singular Benefits, Grants, ‘ Liberties, Privileges, Franchises and Free Customs, and ‘ also all Manner of other Things at any Time given or ‘ granted unto the said Companies of Barbers or Surgeons, ‘ by whatsoever Name or Names they or any of them were ‘ called, or which they or any of them, or any of their ‘ Predecessors, then or theretofore had by Acts of Parlia- ‘ ment, Letters Patents or otherwise, by any lawful Means ‘ at any Time before the said Act, in as large and ample ‘ Manner and Form, as they or any of them, had, might or ‘ should enjoy the same, notwithstanding the said Union ‘ or Conjunction of the said Companies, and as if the same ‘ were and had been specially and particularly expressed ‘ and declared, with the best and most clearest Words and

‘ Terms of Law, to all Intents and Purposes: And it was
‘ thereby also enacted, That all Persons of the said Com-
‘ pany incorporated by the said Act, and their Successors,
‘ that should be lawfully admitted and approved to occupy
‘ Surgery after the Form of the Statute in that case made
‘ and provided, should be exempt from bearing of Armour,
‘ or to be put in any Watches or Inquests; and that they
‘ and their Successors, should have the Search, Oversight,
‘ Punishment and Correction, as well of Freemen as of
‘ Foreign, for such Offences as they or any of them, should
‘ commit against the good Order of Barbery and Surgery,
‘ as theretofore among the said Company of Barbers of
‘ *London* had been used and accustomed, according to the
‘ Rules and Ordinances by them made and approved of,
‘ pursuant to the Statute in that Behalf ordained and pro-
‘ vided: And it was thereby further enacted, That no
‘ Person within the City of *London*, Suburbs of the same,
‘ and one Mile Compass of the said City, using any Barbery
‘ or Shaving, should occupy any Surgery, letting of Blood,
‘ or any other Thing belonging to Surgery, except Drawing
‘ of Teeth only; and that whosoever should use the Mystery
‘ or Craft of Surgery within the Circuit aforesaid, should,
‘ as long as he should use the said Mystery or Craft, in no
‘ wise occupy or exercise the Feat or Craft of Barbery or
‘ Shaving: And whereas in and by certain Letters Patents
‘ under the Great Seal of *England*, bearing Date the
‘ fifteenth Day of *August* in the fifth Year of the Reign of
‘ his late Majesty King Charles the First, reciting the said
‘ Act of Parliament of the thirty-second Year of the Reign
‘ of King Henry the Eighth; and that the Men of the
‘ same Societies, as well from the Time of their said Union
‘ and Incorporation as before, respectively had, held, used
‘ and enjoyed divers Liberties, Franchises, Immunities,
‘ Customs and Preheminences, within the City of *London*,
‘ the Suburbs and Liberties thereof, and certain Villages,
‘ and Places thereto adjacent, as well on account of the said
‘ Act of Parliament, and other Acts of Parliament, as by

‘ virtue and on account of divers Charters and Letters
‘ Patents made and granted by the late King James the
‘ First, and other Kings and Queens of *England*, his said
‘ Majesty King Charles the First did thereby grant, ratify
‘ and confirm unto the said Masters and Governors of the
‘ Mystery and Commonalty aforesaid, and their Successors,
‘ all and singular the Manors, Messuages, Lands, Tene-
‘ ments, Customs, Liberties, Franchises, Immunities, Juris-
‘ dictions and Hereditaments whatsoever, as well within the
‘ City of *London*, the Liberties and Suburbs thereof, as
‘ within the Liberties and Precincts therein after mentioned,
‘ which the Men of the aforesaid Societies of Barbers and
‘ Surgeons, or either of them, then lawfully had, held, used
‘ and enjoyed, by reason of any Letters Patents of any
‘ the former Kings and Queens of *England*, or by Colour
‘ of any lawful Prescription, Use, or Custom, or by any
‘ other lawful Means, Rights or Title theretofore had, used
‘ or accustomed: And his said late Majesty King Charles
‘ the First did thereby give Power to the said Company and
‘ Corporation to make Bye-laws for the good Order and
‘ Government of the said Society, in such Manner, and
‘ under such Restrictions, as is therein mentioned; and to
‘ make annual Elections of Masters or Governors of the
‘ said Commonalty, whereof two to be Professors in the Art
‘ and Science of Surgery; and also to elect and constitute
‘ ten of the Freemen of that Society to be Examiners of the
‘ Surgeons of *London*, during their Lives: And it was
‘ thereby further granted, That no Person or Persons what-
‘ soever, whether a Freeman of the said Society, or a
‘ Foreigner, or a Native of *England*, or an Alien, should
‘ use or exercise the said Art or Science of Surgery within
‘ the said Cities of *London* and *Westminster*, or either of
‘ them, or within the Distance of seven Miles of the said
‘ City of *London*, for his or their private Lucre or Profit,
‘ (except such Physicians as are therein mentioned) unless
‘ the said Person or Persons were first tried and examined
‘ in the Presence of two or more of the Masters or Governors

‘ of the Mystery and Commonalty aforesaid for the Time
‘ being, by four or more of the said Examiners so to be
‘ elected and constituted as aforesaid, and by the publick
‘ Letters Testimonial of the same Masters or Governors
‘ under their Common Seal approved of, and admitted to
‘ exercise the said Art or Science of Surgery, according to
‘ the Laws and Statutes of the Kingdom of *England*, under
‘ the Penalty in the said Letters Patents mentioned; and
‘ that all and every of the said Freemen and Surgeons so
‘ examined, approved of, and admitted as aforesaid, might
‘ lawfully use and exercise the same Art and Science of
‘ Surgery, as well within the Cities of *London* and *West-*
‘ *minster*, the Liberties and Suburbs thereof, as in any other
‘ Cities, Towns, Boroughs and Places whatsoever of the
‘ Kingdom of *England*: And it was thereby further granted
‘ and provided, That the said Masters and Governors of the
‘ Mystery and Commonalty aforesaid, and their Successors,
‘ might appoint and have a publick Lecture for the Art and
‘ Science of Surgery in their common Hall, or other con-
‘ venient Place, every Week or otherwise, at the Discretion
‘ of the said Masters or Governors and their Assistants, or
‘ the major Part of them for the Time being, to be held for
‘ the better Instruction and Information in the Principles
‘ and Rudiments of the Art and Science of Chirurgery of
‘ all and singular as well Freemen as Foreigners, whether
‘ native Subjects of *England* or Aliens, to be entered and
‘ admitted as is therein mentioned: And it was thereby
‘ also constituted and ordained, That no one, whether a
‘ Freeman of the Mystery or Commonalty aforesaid, or a
‘ Foreigner, whether a Native of *England*, or an Alien,
‘ exercising the Art of Surgery within the Cities of *London*
‘ and *Westminster*, or the Suburbs or Liberties thereof, or
‘ within seven Miles of the said City of *London*, should go
‘ out from the Port of *London*, or send out any Apprentice,
‘ Servant or other Person whomsoever, from the same Port,
‘ to execute or undertake the Place or Office of a Surgeon
‘ for any Ship, whether in the Service of the Crown, or of

'any Merchant or others, unless they and their Medicines, 'Instruments and Chests respectively, were first examined, 'inspected and allowed by two such Masters or Governors 'of the Mystery and Commonalty aforesaid for the Time 'being, as were skilled, knowing and Professors in the same 'Art of Surgery, under the Penalty therein mentioned: 'And whereas, since the said Act for Incorporation of the 'said two Companies, those of the said Company practising 'Surgery, have from their sole and constant Study of and 'Application to the said Science, rendered the Profession 'and Practice thereof of great Benefit to this Kingdom: 'And whereas the Barbers belonging to the said Corpora-'ration are now, and for many Years have been engaged 'and employed in a Business foreign to, and independent 'of the Practice of Surgery; and the Surgeons belonging 'to the same Corporation being now become a numerous 'and considerable Body, and finding their Union with the 'Barbers inconvenient in many Respects, and in no Degree 'conducive to the Progress or Improvement of the Art of 'Surgery; and that a Separation of the Corporation of 'Barbers and Surgeons, and making two Corporations of 'the present united Company of Barbers and Surgeons, 'will contribute much to the Improvement of Surgery, 'and thereby become a Matter of publick Utility, are 'therefore desirous that the Surgeons being Freemen of the 'said Company, may be made a Corporation separate and 'distinct from and Independent of the Barbers of and 'belonging to the said Company;' May it therefore please your most Excellent Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the said Union and Incorporation of the Barbers and Surgeons of *London*, made and effected by the said recital Act of the thirty-second Year of King Henry the Eighth, shall from and after the twenty-fourth Day of *June* one thousand seven

hundred and forty-five, be, and the same is hereby dissolved, vacated and declared to be void and of no Effect, and that such of the Members of the said united Company or Corporation, who are Freemen of the said Company, and admitted and approved Surgeons within the Rules of the said Company and Corporation, and their Successors, shall from thenceforth be made, and they are hereby made and constituted a separate and distinct Body Corporate, and Commonalty perpetual, which, at all Times thereafter, shall be called by the Name of *Masters, Governors and Commonalty of the Art and Science of Surgeons of* London; and by the same Name, shall and may implead and be impleaded before all Manner of Justices in all Courts and in all Manner of Actions and Suits, and purchase, enjoy and take to them, and their Successors, any Lands, Tenements, Rents or Hereditaments, not exceeding the yearly Rent or Value of two hundred Pounds in the whole, without incurring any of the Penalties or Forfeitures of the Statutes of Mortmain.

II. And it is hereby further enacted by the Authority aforesaid, That it shall and may be lawful to and for the said Company or Corporation herein before established and incorporated, from time to time, in the Manner herein after mentioned, to elect, choose, and appoint one principal Master or Governor, two other Governors or Wardens, ten Examiners of Surgeons, and twenty-one Persons to be the Court of Assistants of the said Company or Corporation, to be respectively qualified and admitted in such Manner, and to continue in the said Offices respectively, for such Time and Times respectively, as by the By-laws, Rules, Ordinances, and Constitutions of the said Company or Corporation, shall be, from time to time, ordered, directed, provided and appointed.

III. And it is hereby further enacted, That it shall and may be lawful to and for the Master and Governors of the said Company or Corporation for the Time being, or any two of them, with nine or more of the Members of the said Court of Assistants of the same Company for the Time

being, when and as often as to two of the said Master and Governors shall seem meet, to hold Courts and Assemblies, in order to treat and consult about and concerning the Rule, Order, State, and Government of the said Company or Corporation herein before established and incorporated as aforesaid; and also that it shall and may be lawful to and for the said Master and Governors and Court of Assistants so assembled, or the major Part of them, to make, ordain, constitute, establish, ratify, confirm, annul, revoke, or abrogate, from time to time, such By-laws, Ordinances, Rules, and Constitutions, as to them shall seem requisite, profitable, and convenient for the Regulation, Government, and Advantage of the said Company or Corporation; so as such By-laws, Ordinances, Rules, and Constitutions be examined, approved of, and allowed, as by the Laws and Statutes of this Realm is provided and required.

IV. Provided always, and it is hereby enacted and declared, That the several By-laws, Ordinances, Rules, and Constitutions, made and established for the Regulation and Government of the said United Company or Corporation, so far as the same relate to, or concern the Art and Science of Surgery only, and which, on the twenty-third day of *June* one thousand seven hundred and forty-five, shall be subsisting, and in Force, and shall not be repealed, annulled, or abrogated by virtue of this present Act, shall continue and be in Force; and shall be exercised, observed, and executed by the said Company of Surgeons established and incorporated by this Act, until such Time and Times respectively as the same By-laws, Ordinances, Rules, and Constitutions shall respectively be repealed, annulled, and made void, by virtue and under the Authority of this present Act.

V. Provided also, and it is hereby further enacted and declared, That *John Ranby* Esquire, Principal Serjeant Surgeon to his Majesty, shall be, and he is hereby constituted and appointed Principal Master or Governor; and that Master *Joseph Sandford* and *William Cheselden* Esquire, two of the present Wardens of the said United

Company shall be, and they are hereby constituted and appointed, the two other Governors or Wardens of the Company of Surgeons made, established, and incorporated by this Act; and that they shall continue in, and hold, enjoy and exercise the said Offices respectively from the said twenty-fourth Day of *June*, until others shall be elected and appointed to the said Offices respectively, as herein after is mentioned: And also that *Ambrose Dickins* Esquire, Principal Serjeant Surgeon to his Majesty, *William Petty* Esquire, *John Shipton* Esquire, the said *William Cheselden*, *John Freke*, *William Pyle*, *Legard Sparham*, *James Hickes*, and *Peter Sainthill*, who are the present Examiners of Surgeons, together with the said *John Ranby*, shall be, and they are hereby constituted and appointed Examiners of Surgeons for the said Company of Surgeons made, established, and incorporated by this Act; and that they shall respectively continue in, and hold, enjoy, and exercise the said Office of Examiners for and during their natural Lives respectively, or until they shall be respectively removed out of the said Office, pursuant, and according to the By-laws, Rules, and Constitutions of the said Company of Surgeons, established and incorporated by this Act; And also that the said *John Ranby*, *Joseph Sandford*, *William Cheselden*, *Ambrose Dickins*, *William Petty*, and *John Shipton*, *John Hayward*, the said *John Freke*, *William Pyle*, *Legard Sparham*, *James Hickes*, and *Peter Sainthill*, *Noah Roul*, *John Westbrook*, *William Singleton*, and *James Phillips*, and such five other Persons as shall hereafter be elected and appointed for that Purpose, in pursuance of this Act, and as is herein after mentioned, shall be, and they are hereby constituted and appointed the Court of Assistants of the Company of Surgeons made, established and incorporated by this Act; and that they shall continue in, and hold, enjoy, and exercise the said Office during their natural Lives respectively, or until they shall respectively be removed out of the said Office, pursuant and according to the By-laws, Rules, and Constitutions of the same Company.

VI. And it is hereby further enacted, That it shall and may be lawful to and for the said *John Ranby*, *Joseph Sandford*, *William Cheselden*, *Ambrose Dickins*, *William Petty*, *John Shipton*, *John Hayward*, *John Freke*, *William Pyle*, *Legard Sparham*, *James Hickes*, *Peter Sainthill*, *Noah Roul*, *John Westbrook*, *William Singleton*, and *James Phillips*, to meet at or in such Place as the said *John Ranby*, *Joseph Sandford*, and *William Cheselden*, or any two of them, shall appoint, on the first Day of *July* one thousand seven hundred and forty-five, between the Hours of ten and two of the Clock of the same Day; and then and there to elect, choose, and appoint, out of the Freemen of the said Company or Corporation of Surgeons established and incorporated by this Act, by the Majority of Votes of such of the said sixteen Persons herein before appointed to be of the Court of Assistants, who shall be present at such Meeting, so many other Persons to be of the Court of Assistants of the same Company or Corporation, as will make the Number twenty-one, to continue in the said Office for and during their natural Lives respectively, or until they shall be respectively removed out of the said Office.

VII. And it is further enacted, That the Master, Governors, and Court of Assistants for the Time being, of the said Company of Surgeons made, established, and incorporated by this Act, shall, upon the first *Thursday* in the Month of *July* in the Year one thousand seven hundred and forty-six; and on the first *Thursday* in the Month of *July* in every succeeding Year, meet at such Place as the Master and Governors of the same Company for the Time being, or any two of them shall appoint; and then and there elect, choose, and appoint, out of their Body, by the Majority of Votes of such of the said Master, Governors, and Court of Assistants, who shall be then present, one Person to be Principal Master or Governor, and two other Persons to be Governors or Wardens of the said Company or Corporation of Surgeons, established and incorporated by this Act, for the then succeeding Year; and then and there also, in like

manner, elect, choose, and appoint, out of their own Body, such other Person or Persons, to be Examiner or Examiners of Surgeons, for the same Company, in the Place or Stead of such Examiner or Examiners, as shall have happened to die, or have been removed from the said Office of Examiner, in the then next preceding Year; and also in like manner, elect, choose, and appoint, out of the Freemen of the said Company or Corporation of Surgeons established and incorporated by this Act, such Person or Persons to be of the Court of Assistants of the same Company or Corporation, in the Place and Stead of such Person or Persons who shall have happened to die in, or have been removed from, the said Office of Court of Assistants, in the then next preceding Year.

VIII. And it is hereby further enacted, That the said Company of Surgeons made, established, and incorporated by this Act, and their Successors, and all Persons who shall be Freemen of the same Company or Corporation, shall and may, from time to time, and at all Times for ever hereafter, have, hold, and enjoy all and every such and the same Liberties, Privileges, Franchises, Powers, and Authorities, as the Members of the said United Company or Corporation, being Freemen of the said Company, and admitted and approved Surgeons, within the Rules of the said Company and Corporation, could or might respectively have had, held, and enjoyed, by virtue of the said recited Act of Union or Incorporation, and the said Letters Patent of his said late Majesty King Charles the First respectively, and other the Royal Grants, Charters, and Patents, therein mentioned and referred to, so far as the same relate to the Art or Science of Surgery only, and not otherwise; and that in as full, ample, and beneficial Manner, to all Intents and Purposes, as if the same had in and by this present Act been expressly repeated and re-enacted; and that they, and all such who already have been, or hereafter shall be, examined and approved, pursuant to the Rules of the said Company, shall be entitled to practice freely, and without

Restraint, the Art and Science of Surgery, throughout all and every his Majesty's Dominions; any Law or Custom to the contrary notwithstanding.

IX. And it is hereby further enacted, That from and after the said first Day of *July* one thousand seven hundred and forty-five, the Examiners of the Company of Surgeons established by this Act shall, and they are hereby required, from time to time, upon Request to them made, to examine every Person who shall be a Candidate to be appointed to serve as a Surgeon, a Surgeon's Mate, of any Regiment, Troop, Company, Hospital, or Garrison of Soldiers in the Service of his Majesty, his Heirs, or Successors, in like Manner as they do or shall examine any Surgeon or Surgeons to be appointed to serve on Board any Ship or Vessel in the Service of his Majesty, his Heirs or Successors.

X. And it is hereby further enacted by the Authority aforesaid, That all and every Person and Persons, being Freemen of the said Company and Corporation of Surgeons established and incorporated by this Act, and who already have been, or hereafter shall be, examined and approved pursuant to the Rules and Orders of the said Company, and every of them, for so long Time as he and they shall use and exercise the said Art or Science of Surgery, and no longer, shall and may, at all Times hereafter, be freed and exempted from the several Offices of Constable, Scavenger, Overseer of the Poor, and all other Parish, Ward, and Leet Offices, and of and from the being put into or serving upon any Jury or Inquest: And if at any Time hereafter any such Person or Persons, using and Practising the said Art or Science of Surgery, and being qualified as aforesaid, shall be chosen and elected into any of the said Offices, or returned, required, or appointed to serve on any Jury, Leet, or Inquest, or be disquieted or disturbed by reason thereof; that then such Person or Persons, producing a Testimonial, under the Common Seal of the said Corporation, of such his Examination, Approbation, and Freedom, to the Person or Persons by whom he shall be so elected or appointed, or by or

before whom he shall be summoned, returned, or required to serve or hold any of the said Offices or Duties, shall be absolutely discharged from the same; and such Nomination, Election, Return, and Appointment, shall be utterly void, and of no Effect; any Order, Custom, Law, or Statute to the contrary in any wise notwithstanding.

XI. Provided always, and be it hereby enacted by the Authority aforesaid, That this Act, or any Thing therein contained, shall not extend, or be construed or taken to prejudice, abridge, or infringe any of the Privileges, Authorities, Powers, Rights, Liberties, or Franchises heretofore granted by any Act or Acts of Parliament, or by any Letters Patents, Charters or Charter of any of his Majesty's Royal Predecessors, Kings or Queens of *England*, to the President and College, or Commonalty of the Faculty of Physick in *London*.

XII. And it is hereby further enacted by the Authority aforesaid, That such of the Members of the said United Company or Corporation, who are Freemen of the said Company, and are not admitted or approved Surgeons, and their Successors, shall, from and after the said twenty-fourth Day of *June* one thousand seven hundred and forty-five, be, and they are hereby made and constituted, a Body Corporate, and Commonalty Perpetual, which, at all Times hereafter shall be called by the Name of *The Master, Governors, and Commonalty of the Mystery of Barbers of* London; and by the same Name shall plead and be impleaded before all manner of Justices, in all Courts, and in all manner of Actions and Suits; and also purchase, enjoy, and take to them, and their Successors, any Lands, Tenements, Rents, or Hereditaments, not exceeding the yearly Rent or Value of two hundred Pounds in the whole, without incurring any of the Penalties or Forfeitures of the Statute of Mortmain.

XIII. And it is hereby further enacted by the Authority aforesaid, That Master *Jonathan Medley*, the present first Master or Governor of the said United Company or Corporation, and Master *Humphrey Negus*, the present third

Master or Governor of the said United Company, and such two other Persons as shall hereafter be elected and appointed for that purpose in pursuance of this Act, and as is herein after mentioned, shall be and they are hereby respectively established and confirmed the Master and Governors of the Company or Corporation of Barbers of *London*, established and incorporated by this Act; and shall continue in, and hold, exercise and enjoy the said Offices respectively, until others shall be chosen, elected and appointed in and to the same Offices respectively, pursuant and according to the By-laws, Rules, Orders and Constitutions of the same Company; and also that the said *Jonathan Medley*, *Humphrey Negus*, and *William Parker*, *Luke Maurice*, *John Barnwell*, *John Truelove*, *William Haddon*, *John Negus*, *Edward Boxley*, *Samuel Rutter*, *Robert Scrooby*, *Richard Swithin*, *Edward Colebeck*, *Togarmah Jones*, and *John Guerney*, being fifteen of the present Court of Assistants of the said United Company, and such nine other Persons as shall hereafter be elected and appointed for that Purpose in pursuance of this Act, and as is herein after mentioned, shall be and they are hereby constituted and appointed the Court of Assistants of the Company of Barbers, made, established, and incorporated by this Act; and shall continue in, and hold, enjoy and exercise the said Office during their natural Lives respectively, or until they shall be respectively removed out of the said Office, pursuant and according to the said By-laws, Rules, Ordinances and Constitutions of the said Company of Barbers of *London*.

XIV. And it is hereby further enacted, That it shall and may be lawful to and for the said *Jonathan Medley*, *Humphrey Negus*, *William Parker*, *Luke Maurice*, *John Barnwell*, *John Truelove*, *William Haddon*, *John Negus*, *Edward Boxley*, *Samuel Rutter*, *Robert Scrooby*, *Richard Swithin*, *Edward Colebeck*, *Togarmah Jones*, and *John Guerney*, or the major Part of them, to meet at or in the Hall now belonging to the said United Company, situate in *Monkwell-street* in the City of *London*, on the twenty-fifth

Day of *June* one thousand seven hundred and forty-five, between the Hours of Nine in the Morning and One in the Afternoon of the same Day, and then and there to elect, choose and appoint out of the Freedom of the said Company or Corporation of the Barbers of *London*, established and incorporated by this Act, by the Majority of the Votes of such of the said fifteen Persons last mentioned, who shall be present at such Meeting, so many other Persons to be of the said Court of Assistants of the said Company or Corporation of the Barbers of *London*, as will make the Number twenty-four, to continue in the said Office respectively for and during their natural Lives, or until they shall be respectively removed out of the said Office; and also that immediately after such Court of Assistants shall be made up the said Number of twenty-four Persons, the said Court of Assistants shall then and there, by the Majority of Votes of such of the said Court of Assistants as shall be then present, elect, choose and appoint from among themselves, two Persons, to be the third and fourth Governors of the said Company or Corporation of the Barbers of *London*, to continue in, hold, exercise and enjoy the said Offices respectively as aforesaid.

XV. And it is hereby further enacted, That it shall and may be lawful for the Master and Governors for the Time being of the said Company or Corporation of Barbers, or any two or more of them, with eleven or more of the Members of the said Court of Assistants for the Time being, when and as often as to two or more of the said Master and Governors shall seem meet, to hold Courts or Assemblies at or in the Hall of the said Company for the Time being, in order to treat and consult about the Rule, State, Order and Government of the said Company or Corporation of Barbers; and also that it shall and may be lawful to and for the said Master and Governors, and Court of Assistants so assembled, or the major Part of them, to make, constitute, ordain, establish, ratify and confirm all or any such By-laws, Ordinances, Rules and Constitutions, as to them shall seem

requisite, proper or convenient for the Regulation, Government, Profit or Advantage of the said Company or Corporation of the Barbers of *London*, and the Members thereof, and the same, from time to time, to alter or repeal; so as the By-laws, Ordinances, Rules and Constitutions so to be made and established, shall be examined, approved and allowed, as by the Laws and Statutes of this Realm is provided and required.

XVI. Provided always, and it is hereby enacted and declared, That the several By-laws, Ordinances, Rules and Constitutions, made and established for the Regulation and Government of the said United Company or Corporation, so far as the same do not relate to or concern the Art or Science of Surgery, and which on the said twenty-third Day of *June* shall be subsisting and in Force, and shall not be repealed, annulled or abrogated by virtue of this present Act, shall continue and be in Force, and shall be exercised, observed and executed by the said Company of Barbers established and incorporated by this Act, until such Time and Times respectively as the same By-laws, Ordinances, Rules and Constitutions shall respectively be repealed, annulled and made void, by Virtue and under the Authority of this present Act.

XVII. And it is hereby further enacted by the Authority aforesaid, That the Master and Governors of the said Company or Corporation of Barbers of *London* shall be yearly elected and chosen on the second *Thursday* in *August*, by the Court of Assistants, or the major Part of them, or in such Manner as by the By-laws, Rules, Orders and Constitutions of the same Company or Corporation shall be ordained or provided; and that when and as often as any Member of the said Court of Assistants of the said Company of Barbers shall happen to die or be removed, it shall and may be lawful to and for the surviving Members of the said Court of Assistants, or the major Part of them, to nominate and elect one other Person, being a Freeman of the same Company, to be a Member of the said Court of Assistants, in the Room

of the Person so deceased or removed; and the Person so nominated or elected shall continue in, hold and exercise the said Office for and during his natural Life, or until he shall be removed out of the same.

XVIII. And it is hereby further enacted by the Authority aforesaid, That the Master, Governors and Commonalty of the Mystery of Barbers of *London*, hereby made, established and incorporated as aforesaid, and their Successors, and all Persons who shall be free of the same Company or Corporation, shall and may from time to time, and at all Times for ever hereafter, have, hold and enjoy all and every such and the same Liberties, Privileges, Franchises, Powers and Authorities, as the said United Company or Corporation, with respect to every Thing but Surgery, and the Members of the said United Company, occupying the Feat or Craft of Barbery or Shaving, could or might respectively have had, held and enjoyed by virtue of the said recited Act of Union or Incorporation, and Letters Patents of his late Majesty King Charles the First, and other the Royal Grants, Charters and Patents therein respectively mentioned and referred to, so far as the same do not concern or relate to the Art and Science of Surgery; and that in as full, ample and beneficial Manner, to all Intents and Purposes, as if the same had been expressly repeated, set down, and enacted in and by this present Act.

XIX. And it is hereby further enacted by the Authority aforesaid, That the Sum of five hundred and ten Pounds now vested in the said United Company, and which was given and paid to the said United Company by *Edward Arris*, for the Use of the publick Anatomy Lectures on the Muscles, and also the Annuity or yearly Rent-charge of sixteen Pounds given to the said United Company by the Will of *John Gale* Gentleman, for one Anatomy Lecture, by the name of *Gale's Anatomy*, and charged upon certain Messuages and Tenements at *Snow Hill*, in the Parish of *Saint Sepulchre*, without *Newgate*, *London*, shall from and after the said twenty-fourth Day of *June* one thousand seven

hundred and forty-five, be vested in, and be deemed the sole Property, Estate and Effects of the said Company and Corporation of Surgeons established and incorporated by this Act; and that the said Sum of five hundred and ten Pounds be accordingly paid by the said Company or Corporation of Barbers of *London*, out of the Estate and Effects of and now belonging to the said United Company or Corporation, within three Months next after the said twenty-fourth Day of *June*; and that the said Sum of five hundred and ten Pounds, and the said Annuity or yearly Rent-charge of sixteen Pounds *per Annum*, shall be held and enjoyed by the Purposes intended by the Donors thereof respectively; and that from and after the Payment of the said five hundred and ten Pounds by the said Company of Barbers to the said Company of Surgeons, they the said Master, Governors and Commonalty of the Mystery of Barbers of *London*, and their Successors, shall for ever be discharged of and from the said Sum or Gift of five hundred and ten Pounds, and every Part thereof, and of and from the said Annuity or Gift of sixteen Pounds *per Annum*, and every Part thereof, and of and from all Duties and Trusts in respect of the said Gifts, or either of them; and shall, from time to time, be saved harmless and kept indemnified by the said Company of Surgeons, of, from and against the same, and all Actions, Suits, Charges and Expenses which they the said Master, Governors and Commonalty of the Mystery of Barbers of *London*, or their Successors, shall or may, from time to time, be put unto or sustain on account thereof; and all the Rest and Residue of the Real and Personal Estate and Effects of and belonging to the said United Company or Corporation, and the Arms or Ensigns Armorial of the same Company or Corporation, shall from and after the said twenty-fourth Day of *June* one thousand seven hundred and forty-five, be vested in, and the same are hereby from thenceforth vested in the said Company or Corporation of Barbers of *London*, and their Successors, to and for their own sole and separate Use and Benefit for ever.

XX. And it is hereby further enacted by the Authority aforesaid, That such of the Books, Papers and Writings which now belong to the said United Company of Barbers and Surgeons, and relate to or concern the Surgeons or Surgery only, shall immediately after the said first Day of *July* one thousand seven hundred and forty-five, be delivered by the said Company of Barbers, established and incorporated by this Act, to the Master and Governors, and Court of Assistants, of the said Company of Surgeons established and incorporated by this Act, or such other Person or Persons as they, or the major Part of them shall, by Writing under their Hands appoint to receive the same, for the use and Benefit of the said Company of Surgeons: And that the Master, Governors, and Courts of Assistants of the same Company of Surgeons, or any of them, or such other Person or Persons as they, or the major Part of them shall, by Writing under their Hands appoint, shall and may, from time to time, and at all seasonable Times, upon reasonable Notice, from and after the first Day of *July* one thousand seven hundred and forty-five have free Access to, and Liberty to inspect and peruse, in the Hands of such Person or Persons as the said Company of Barbers shall appoint to have the Care and Custody thereof, all the rest of the Books, Papers and Writings, and also all the Charters and Deeds which now belong to the said United Company of Barbers and Surgeons; and from time to time to take such Copies or Extracts of or from the same, or any of them, as the said Master, Governors, and Court of Assistants of the said Company of Surgeons, or the major Part of them, or such other Person or Persons so to be appointed as aforesaid, shall from time to time desire or require; and also that the said Company of Barbers shall, from time to time, and at all Times, upon reasonable Notice, from and after the said first Day of *July*, produce the said last mentioned Books, Papers, Writings, Charters and Deeds, or any of them, at the Expense of the said Company of Surgeons, upon any Trial at Law, or Hearing in Equity, or Examination of Witnesses,

or otherwise. where the said Company of Surgeons shall have Occasion to make use thereof, or of any of them, and permit the said Company of Surgeons to make use of the same accordingly.

XXI. Provided always, and it is hereby further enacted by the Authority aforesaid, That every Person who hath been bound Apprentice to any Member of the said United Company, and by the Laws or Custom of the City of *London*, or otherwise, is or would be intitled to his Freedom of the said United Company, and to the Freedom of the said City, in case this present Act had never been made, shall be intitled and admitted to his Freedom in the said Company or Corporation of Surgeons, if his Master is or was an examined Surgeon, or else to his Freedom in the said Company of Barbers; and in either Case shall be intitled and admitted to his Freedom in the said City of *London*; any Law, Usage or Custom to the contrary thereof in any wise notwithstanding.

XXII. And be it further enacted by the Authority aforesaid, That this Act shall be deemed, adjudged and taken to be a Publick Act; and be judicially taken Notice of as such by all Judges, Justices, and other Persons whatsoever, without specially pleading the same.

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55. *Geo.* 3. *c.* 194.

An Act, for better regulating the Practice of Apothecaries throughout *England* and *Wales*.

Whereas His Majesty King *James* the First, by Letters Patent, under the Great Seal of *Great Britain*, bearing date the Sixth Day of *December*, in the Fifteenth Year of His Reign, did for himself, his Heirs and Successors, grant unto *William Beese*, and divers other Persons therein named,

and to all and singular other Persons whomsoever, brought up and skilful in the Art, Mystery, or Faculty of Apothecaries, and exercising the same Art, Mystery, or Faculty then, being Freemen of the Mystery of Grocers of the City of *London*, or being Freemen of any other Art, Mystery, or Faculty in the said City of *London* (so as they had been brought up and were expert in the Art or Mystery of Apothecaries), that they, and all such Men of the said Art or Mystery of Apothecaries of and in the said City of *London* and Suburbs of the same, and within Seven Miles of the said City, might and should be one Body Corporate and Politic, in Substance, Deed, and Name, by the Name of the Master, Wardens, and Society of the Art and Mystery of Apothecaries of the City of *London*; and did ordain and declare, that by the same name they might have perpetual Succession, and have, purchase, possess, enjoy, and retain Manors, Messuages, Lands, Tenements, Liberties, Privileges, Franchises, Jurisdictions, and Hereditaments to them and their Successors, in fee simple and perpetuity, or for term of year or years, or otherwise, howsoever. And also Goods and Chattels, and all other things soever, of what name, nature, kind, quality, or sort soever they should be. And also, that they might grant, demise, alien, assign, and dispose of Manors, Lands, Tenements, and Hereditaments, and do and execute all and singular other Acts and things by the said name. And that by the said name of Master, Wardens, and Society of the Art and Mystery of Apothecaries of the City of *London*, they should and might be able to plead and be impleaded, and might have for ever a common Seal; and the same Seal at their pleasure from time to time might break, change, alter, and new make, as to them should seem best. And his said Majesty did, by his said Letters Patent, ordain and grant unto the said Master, Wardens, and Society of the Art and Mystery of Apothecaries aforesaid, certain Ordinances, Rules and Regulations, to be observed, kept, and maintained by them, as in the said Charter are more fully expressed.

And whereas some of the Clauses and Provisions contained in the said recited Charter, so far as the same regard the said Society of Apothecaries, have been found inadequate for the purposes thereby intended, and it is therefore expedient that the same should be altered, varied, and enlarged, and further and other Provisions made;

May it therefore please Your MAJESTY,

That it may be enacted; *And be it Enacted* by the KING's Most Excellent MAJESTY, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the Authority of the same, that the said recited Charter of the Fifteenth Year of the Reign of His Majesty King *James* the First, and all and every the Powers, Provisions, Penalties, Forfeitures, Regulations, Clauses, matters and things therein contained (save and except such part or parts thereof as are hereby altered, varied, or repealed), shall be, and the same is and are hereby declared to be in full force and virtue, and shall be as good, valid, and effectual, to all intents and purposes whatsoever, as if this Act had not been made.

And be it further Enacted, That so much of the said recited Charter as directs, That the said Master and Wardens, and their Successors, or some or one of them, or some Assistants by the Master and Wardens to be appointed and assigned, at fit and convenient times, and in manner and form convenient and lawful, from time to time, as often as to the said Master and Wardens shall seem expedient, shall and may go and enter into any Shop or Shops, House or Houses, Cellar or Cellars, of any Persons whomsoever, using or exercising the Art or Mystery of Apothecaries, or any Part thereof, within the City of *London*, the Liberties or Suburbs thereof, or within Seven Miles of the same City, as well within the Liberty as without, where any Medicines, simple or compound, Wares, Drugs, Receipts, Distilled Waters, Chemical Oils, Syrups, Conserves, Lohocks, Electuaries, Pills, Powders, Lozenges, Oils, Ointments,

Plaisters, or any other things whatsoever, which belong or appertain to the Art or Mystery of Apothecaries as is aforesaid, are likely to be found; and to search, survey, and prove if the same Medicines, simple or compound, Wares, Drugs, Receipts, Distilled Waters, Chemical Oils, Syrups, Conserves, Lohocks, Electuaries, Pills, Powders, Lozenges, Oils, Ointments, Plaisters, or any thing or things whatsoever belonging to the Art or Mystery of Apothecaries aforesaid, be and shall be wholesome, medicinable, meet and fit for the cure, health, and ease of His Majesty's Subjects;

And also so much of the said recited Charter as directs, That the aforesaid Master and Wardens of the Mystery aforesaid, and the said Assistants for the time being, thereunto nominated and appointed by the Master and Wardens, and their Successors from time to time, may have, and by virtue of these Presents, shall have full power and authority to examine and try all and singular Persons professing, using, or exercising, or which hereafter shall profess, use, or exercise the Art or Mystery of Apothecaries, or any part thereof, within the aforesaid City of *London*, the Liberties or Suburbs thereof, or within Seven Miles of the same City, as well within Liberties as without, touching or concerning their and every of their knowledge, skill, and science, in the aforesaid Art or Mystery of Apothecaries, and to remove and prohibit all those from the exercise, use, or practice of the said Art or Mystery, whom hereafter they shall find either unskilful, ignorant, or insufficient, or obstinate, or refusing to be examined by virtue of these Presents, in the Art or Mystery aforesaid. And also all and singular Medicines, Wares, Drugs, Receipts, Distilled Waters, Oils, Chemical Preparations, Syrups, Conserves, Lohocks, Electuaries, Pills, Powders, Lozenges, Oils, Ointments, and Plaisters, and all other things belonging to the aforesaid Art, which they shall find unlawful, deceitful, stale, out of use, unwholesome, corrupt, unmedicinable, pernicious, or hurtful, to burn before the Offender's Doors,

And also to lay, impose, and exact Mulcts, and other Pains and Penalties, by Fines and Amerciaments, upon such Offenders, according to their sound discretions, and the Ordinances by them and their Successors so as aforesaid to be made and appointed, shall be, and the same is hereby repealed.

And be it further Enacted, That in lieu and stead thereof, the said Master, Wardens, and Society of Apothecaries for the time being, and their Successors, or any of the Assistants, or any other person or persons properly qualified, as hereinafter is mentioned, to be by the Master and Wardens nominated and assigned, not being fewer in number than Two Persons at the least, shall and may from time to time, and at all seasonable and convenient times, in the day time, as often as to the said Master and Wardens it shall seem expedient, go and enter into any Shop or Shops, of any person or persons whatever, using or exercising the Art or Mystery of an Apothecary in any part of *England* or *Wales*; and shall and may search, survey, prove, and determine, if the Medicines, simple or compound, Wares, Drugs, or any thing or things whatsoever therein contained, and belonging to the Art or Mystery of Apothecaries aforesaid, be wholesome, meet, and fit for the cure, health, and ease of His Majesty's Subjects; and all and every such Medicines, Wares, Drugs, and all other things belonging to the aforesaid Art, which they shall find false, unlawful, deceitful, stale, unwholesome, corrupt, pernicious or hurtful, shall and may burn, or otherwise destroy; and also shall and may report to the Master, Wardens, and Assistants of the said Society, the Name or Names of such person or persons as shall be found to have the same in their possession; and the said Master, Wardens, and Assistants, shall and may impose and levy the following Fines and Penalties upon each and every person whose Name shall be so reported to them, as hereinafter mentioned: For the first offence the Sum of Five Pounds; for the second offence the Sum of Ten Pounds; and for the third, and every other offence, the Sum of Twenty Pounds.

Provided always, and be it Enacted, That no person to be by the Master, Wardens, and Assistants for the time being, chosen and appointed a Member of the Court of Examiners, or to be by the Master and Wardens nominated and assigned to go and enter into any Shop or Shops, for the purposes aforesaid, within the City of *London*, the Liberties or Suburbs thereof, or within Thirty Miles of the same, shall be deemed to be properly qualified, unless he shall be a Member of the Society of Apothecaries aforesaid, of not less than Ten Years standing; nor shall any person be deemed to be properly qualified to be nominated and assigned to go and enter into any Shop or Shops in any other part of *England* and *Wales* for the purposes aforesaid, or to be appointed one of the Five Apothecaries hereinafter mentioned, and directed to be appointed for the purpose of examining Assistants to Apothecaries in compounding and dispensing Medicines, as hereinafter is mentioned, except he shall have been an Apothecary in actual practice for not less than Ten Years at least, previously to his being so nominated, or assigned, or appointed.

And whereas it is the duty of every Person using or exercising the Art and Mystery of an Apothecary, to prepare with exactness, and to dispense such Medicines as may be directed for the sick by any Physician lawfully licensed to practise Physic by the President and Commonalty of the Faculty of Physic in *London*, or by either of the two Universities of *Oxford* or *Cambridge*; therefore, for the further protection, security, and benefit of His Majesty's Subjects, and for the better regulation of the practice of Physic throughout *England* and *Wales*, *Be it Enacted*, That if any Person using or exercising the Art and Mystery of an Apothecary, shall at any time knowingly, wilfully, and contumaciously refuse to make, mix, compound, prepare, give, apply, or administer, or any way to sell, set on sale, put forth, or put to sale to any Person or Persons whatever, any Medicines, compound Medicines, or medicinable Compositions, or shall deliberately or negligently, falsely, un-

faithfully, fraudulently, or unduly make, mix, compound, prepare, give, apply or administer, or any way sell, set on sale, put forth, or put to sale to any Person or Persons whatever, any Medicines, Compound Medicines, or Medicinable Compositions, as directed by any Prescription, Order or Receipt, signed with the initials in his own hand-writing, of any Physician so lawfully licensed to practise Physic, such person or persons so offending, shall, upon complaint made within Twenty-one Days by such Physician, and upon conviction of such offence before any of His Majesty's Justices of the Peace, unless such Offender can shew some satisfactory reason, excuse, or justification in this behalf, forfeit, for the first offence the Sum of Five Pounds; for the second offence the Sum of Ten Pounds; and for the third offence he shall forfeit his Certificate, and be rendered incapable in future of using or exercising the Art and Mystery of an Apothecary, and be liable to the Penalty inflicted by this Act upon all who practise as such without a Certificate, in the same manner as if such party so convicted had never been furnished with a Certificate enabling him to practise as an Apothecary; and such Offender so deprived of his Certificate, shall be rendered and deemed incapable in future of receiving and holding any fresh Certificate, unless the said party so applying for a renewal of his Certificate, shall faithfully promise and undertake, and give good and sufficient Security, that he will not in future be guilty of the like offence.

And be it further Enacted, That each and every of them the said Master and Wardens for the time being, may, and they are hereby respectively empowered, by writing under his or their hands, to appoint any one or more of the said Court of Assistants to act as Deputy Master, or as Deputy Wardens, as the case may be, in all matters and things done, or authorized to be done, by the said Master, or the said Wardens, under and by virtue of the said recited Charter, or of this Act, and to remove such Deputy Master, or Deputy Wardens so to be appointed from time to time, as

the said Master, or the said Wardens, shall respectively think proper; and all acts, matters, and things which shall be lawfully done by the said Deputy Master or Deputy Wardens so to be appointed as aforesaid, as the case may be, shall be as good, valid, and effectual, as if the same were done and performed by the said Master and Wardens respectively.

And whereas much mischief and inconvenience has arisen, from great numbers of persons in many parts of *England* and *Wales* exercising the functions of an Apothecary, who are wholly ignorant, and utterly incompetent to the exercise of such functions, whereby the Health and Lives of the Community are greatly endangered; and it is become necessary that provision should be made for remedying such evils; *Be it therefore further Enacted*, That the said Master, Wardens, and Society of the Art and Mystery of Apothecaries of the City of *London*, incorporated by the said recited Charter of His Majesty King *James* the First, and their Successors, shall be, and they are hereby appointed and constituted, directed and empowered, for ever to superintend the execution of the provisions of this Act, and to enforce and carry the several regulations and provisions thereof, in relation to the several persons practising the Art or Mystery or Profession of an Apothcary throughout *England* and *Wales*, and all other the purposes of this Act, into full execution.

And be it further Enacted, That no Act of the said Master, Wardens, and Society of Apothecaries, incorporated as aforesaid, for the carrying any of the powers and provisions of this Act into execution, shall be, or be deemed to be good or valid (save and except as to such Acts as shall be done by the said Master, Wardens, and Assistants, or others appointed by them, or any of them, as hereinbefore is provided, in pursuance of the Powers and Authorities hereinbefore given to them to enter into Shops to search for, examine and destroy unwholesome Drugs or Medicines, and also save and except as to such acts as shall be done by the

said Court of Examiners, or the major part of them present, or by the Five Apothecaries hereinafter mentioned, or the major part of them present, in pursuance of the authorities hereinafter given to them), unless the same be done at some Assembly or Meeting to be holden by the said Master, Wardens, and Society, in the Hall of the said Society. And that all the Powers and Authorities by this Act granted to, or vested in, the said Master, Wardens, and Society as aforesaid, shall and may from time to time be exercised by the Master, Wardens, and Assistants of the Art and Mystery of Apothecaries aforesaid for the time being, or by the major part of them present, who shall attend at any such Assembly or meeting to be holden as aforesaid (the number present at such Assemblies or Meetings not being less than Thirteen, of which the said Master for the time being shall always be one), and all the Orders and Proceedings of the said Master, Wardens, and Assistants for the time being, or of such major part as aforesaid, shall have the same force and effect, as if the same were made or done by the said Master, Wardens and Society of Apothecaries incorporated as aforesaid.

And be it further Enacted, That for the purposes of this Act, so far as the same regards the Examination of Apothecaries, and Assistants to Apothecaries, Twelve Persons properly qualified, as hereinbefore is mentioned, shall be chosen and appointed by the said Master, Wardens, and Assistants for the time being, (who are hereby authorized and empowered to choose and appoint such Persons, and to remove or displace them from time to time, as they the said Master, Wardens, and Assistants for the time being, shall deem adviseable), and such Persons, when so chosen and appointed, or any Seven of them, shall be, and be called the Court of Examiners of the Society of Apothecaries; and such Court of Examiners, or the major part of them present at any meeting, shall have full power and authority, and are hereby authorized and empowered to examine all Apothecaries, and Assistants to Apothecaries, throughout *England* and *Wales*, and to grant or refuse such Certificate, as here-

inafter is mentioned. And such Court of Examiners, or the major part of them, shall, and they are hereby required to meet and assemble in some convenient Room in the Hall of the said Society, once at least in every week, for the purpose of such Examination, and then and there to examine all Persons applying to be examined, and duly qualified so to be by virtue of this Act.

And be it further Enacted, That at any such Meetings of the said Examiners, a Chairman shall and may be appointed; and when and so often as it shall so happen that there shall be an equal number of Votes upon any one question (including the Vote of the said Chairman), then and in such case, it shall and may be lawful to and for the said Chairman to give the casting or decisive Vote.

And be it further Enacted, That no person shall be capable of acting as an Examiner, under and by virtue of this Act, until he shall have taken and subscribed the following Oath:

"I, *A. B.* do solemnly promise and swear (or, being "one of the people called Quakers, do solemnly affirm) "that I will faithfully, impartially, and honestly, ac- "cording to the best of my skill and knowledge, "execute the trust reposed in me by the Master, War- "dens, and Society of the Art and Mystery of Apo- "thecaries of the City of *London*, as an Examiner, in "the Examination of every person who shall come "before me to be examined, as to his fitness or quali- "fication to act as an Apothecary, or Assistant to an "Apothecary, as the case may be, and that without "favour, affection, prejudice, or malice.

"So help me God."

which Oath, or Affirmation, the said Master, Wardens, or Court of Assistants, or the major part of them, are hereby authorized and required to administer.

And be it further Enacted, That all Persons so to be chosen and appointed Examiners as aforesaid, shall continue in

Office for the space of One Year from the time of their Appointment, (except in case of Death, or being removed or displaced by the said Master, Wardens, and Assistants as aforesaid). *Provided always*, That it shall and may be lawful to and for the said Master, Wardens, and Assistants, to choose and appoint any such Person or Persons going out of Office, again to be an Examiner or Examiners, as aforesaid, if they the said Master, Wardens, and Assistants, shall deem it adviseable so to do.

And be it further Enacted, That in case any Person or Persons so to be chosen, and appointed, shall happen to die during the time he or they shall continue to be an Examiner or Examiners, or be removed or displaced as aforesaid, then it shall and may be lawful for the said Master, Wardens, and Assistants, to choose and appoint any other Person or Persons properly qualified, to be an Examiner or Examiners as aforesaid, in the room of the Person or Persons so dying, or removed, or displaced as aforesaid; and every Person or Persons so chosen and appointed, shall continue in Office for such time and no longer, as the Person or Persons in whose room or stead he or they shall be so chosen and appointed, would have continued in Office.

And to prevent any Person or Persons from practising as an Apothecary, without being properly qualified to practise as such, *Be it further Enacted*, That from and after the First Day of August, One Thousand Eight Hundred and Fifteen, it shall not be lawful for any Person or Persons (except persons already in practice as such), to practise as an Apothecary in any part of *England* or *Wales*, unless he or they shall have been Examined by the said Court of Examiners, or the major part of them, and have received a Certificate of his or their being duly qualified to practise as such, from the said Court of Examiners, or the major part of them, as aforesaid; who are hereby authorized and required to examine all Person and Persons applying to them, for the purpose of ascertaining the skill and abilities of such person or persons in the Science and Practice

of Medicine, and his or their fitness and qualification to practise as an Apothecary; and the said Court of Examiners, or the major part of them, are hereby empowered either to reject such Person or Persons, or to grant a Certificate of such Examination, and of his or their qualification to practise as an Apothecary as aforesaid: *Provided always*, That no Person shall be admitted to such Examination until he shall have attained the full age of Twenty-one Years.

Provided always, and be it Enacted, That no Person shall be admitted to any such Examination for a Certificate to practise as an Apothecary, unless he shall have served an Apprenticeship of not less than Five Years to an Apothecary, and unless he shall produce Testimonials to the satisfaction of the said Court of Examiners, of a sufficient Medical Education, and of a good moral conduct.

And be it further Enacted, That every Person intending to qualify himself under the regulations of this Act to practise as an Apothecary, in any part of *England* or *Wales*, shall give notice to the Clerk of the said Master, Wardens, and Society of Apothecaries as aforesaid, of his intention so to do, who shall notify the same to the said Master, Wardens, and Society of Apothecaries as aforesaid; and the Person so intending to qualify himself, shall present himself at the Meeting held by the said Court of Examiners next succeeding such Notice, and shall undergo such Examination by the said Court of Examiners as aforesaid, or at some other Meeting, as shall or may be appointed and fixed upon by the said Master, Wardens, and Society of Apothecaries, or by the said Court of Examiners, or the major part of them, as aforesaid, for that purpose.

And be it further Enacted, That from and after the First Day of August, One Thousand Eight Hundred and Fifteen, it shall not be lawful for any Person or Persons (except the Persons then acting as Assistants to any Apothecaries as aforesaid, and excepting Persons who have actually served an Apprenticeship of Five Years to an Apothecary)

to act as an Assistant to any Apothecary, in compounding or dispensing Medicines, without undergoing an Examination by the said Court of Examiners, or the major part of them, or by Five Apothecaries, so to be appointed as hereinafter is mentioned, and obtaining a Certificate of his or their qualification to act as such Assistant, from the said Court of Examiners, or the major part of them, or from the said Five Apothecaries, who are hereby authorized and empowered to examine all persons applying to them for that purpose, and to grant a Certificate of such fitness aad qualification.

And be it further Enacted, That for the purposes of this Act, it shall and may be lawful to and for the said Master and Wardens for the time being, or to and for the said Court of Examiners, by writing under their hands, from time to time to appoint Five Apothecaries in any County or Counties respectively throughout *England* and *Wales* (except within the said City of *London*, the Liberties or Suburbs thereof, or within Thirty Miles of the same), to act for such County or Counties, or any other County or Counties near or adjoining, and to remove or displace them from time to time, as they the said Master and Wardens, or the said Court of Examiners, shall deem adviseable; and such Five Apothecaries so to be appointed respectively, as aforesaid, at any Meeting to be held by them as hereinafter mentioned, shall have full power and authority, and are hereby authorized and empowered to examine, all Assistants to Apothecaries throughout the County or Counties in regard of which such Apothecaries shall have been so appointed as aforesaid, and to grant or refuse such Certificate to every such Assistant to Apothecaries, as hereinbefore is authorized in that behalf; and a Meeting of the said Apothecaries, for the purposes aforesaid, shall be held monthly in the County Town of some one of the Counties for which they shall have been appointed to act as aforesaid; and that no act of such Apothecaries shall be, or be deemed to be good or valid, unless the same be done at some such Meeting; and that all

the Powers and Authorities by this Act granted to or vested in such Five Apothecaries, shall and may from time to time be exercised by the major part of them, who shall attend at any Meeting to be holden as above directed, the number of such Apothecaries present at any such Meeting not being less than Three; and all the Orders, Directions, and Certificates of the major part of such Apothecaries present at any such Meeting, shall have the same force and effect as if the same were made, done, or signed by all the said Five Apothecaries for the time being; and at every such Meeting of the said Apothecaries, a Chairman shall and may be appointed, and when, and so often as it shall so happen that there shall be an equal number of Votes upon any one question (including the Vote of the said Chairman) then and in such case, it shall and may be lawful to and for the said Chairman to give the casting, or decisive Vote.

And be it further Enacted, That the Sum of Ten Pounds Ten Shillings shall be paid to the said Master, Wardens, and Society of Apothecaries, for every such Certificate as aforesaid, on obtaining the same, by every person intending to practise as an Apothecary within the City of *London*, the Liberties or Suburbs thereof, or within Ten Miles of the same City; and the Sum of Six Pounds Six Shillings by every person intending to practise as an Apothecary in any other part of *England* or *Wales* (except the said City of *London*, the Liberties or Suburbs thereof, or within Ten Miles of the said City:) and no person having obtained a Certificate to practise as an Apothecary in any other part of *England* or *Wales* (except the said City of *London*, the Liberties or Suburbs thereof, or within Ten Miles of the said City as aforesaid), shall be entitled to practise within the said City of *London*, the Liberties or Suburbs thereof, or within Ten Miles of the said City, unless and until he shall have paid to the said Master, Wardens, and Society, the further Sum of Four Pounds Four Shillings, in addition to the said Sum of Six Pounds Six Shillings so paid by him as aforesaid, and shall have had endorsed on his said Certificate, a Receipt

from the said Master, Wardens, and Society, for such additional Sum of Four Pounds Four Shillings; and the Sum of Two Pounds Two Shillings by every Assistant; and the several Sums of Money arising from the granting of such Certificates, shall be applied in manner hereinafter directed.

And be it further Enacted, That if any person (except such as are then actually practising as such) shall, after the said First Day of August, One Thousand Eight Hundred and Fifteen, act or practise as an Apothecary in any part of *England* or *Wales*, without having obtained such Certificate as aforesaid, every person so offending shall for every such Offence, forfeit and pay the Sum of Twenty Pounds; and if any person (except such as are then acting as such, and excepting persons who have actually served an Apprenticeship as aforesaid) shall, after the said First Day of August, One Thousand Eight Hundred and Fifteen, act as an Assistant to any Apothecary, to compound and dispense Medicines, without having obtained such Certificate as aforesaid, every person so offending, shall for every such offence forfeit and pay the Sum of Five Pounds.

And be it further Enacted, That no Apothecary shall be allowed to recover any Charges claimed by him in any Court of Law, unless such Apothecary shall prove on the Trial, that he was in practice as an Apothecary prior to, or on the said First Day of August, One Thousand Eight Hundred and Fifteen, or that he has obtained a Certificate to practise as an Apothecary, from the said Master, Wardens, and Society of Apothecaries as aforesaid.

Provided always, and be it further Enacted, That if the said Court of Examiners, or the major part of them, having examined any Person or Persons applying to qualify himself or themselves to practise as an Apothecary, or if they, or the said Five Apothecaries so to be appointed for any County or Counties as aforesaid, having examined any Person or Persons applying to qualify himself or themselves to practise as an Assistant to an Apothecary, in compounding and dispensing Medicines, shall see cause to refuse such Certificate

as aforesaid, to any such Person or Persons so applying to qualify himself or themselves as an Apothecary or Assistant as aforesaid; yet it shall and may be lawful for such Person or Persons who shall be so refused, to apply at any future time to be again examined, so that such second application by any Person or Persons applying to qualify himself or themselves as an Apothecary, be not within Six Months of such first Examination; and so that such second application by any person or persons applying to qualify himself or themselves as an Assistant, be not within Three Months of such first Examination; and if on such re-examination he or they shall appear to the persons examining, to be then properly qualified, it shall and may be lawful for the said Court of Examiners, or to and for the said Five Apothecaries in any County or Counties as aforesaid, to grant such person or persons so applying, such Certificate as aforesaid.

Provided always, and be it further Enacted, That the said Master, Wardens, and Society of Apothecaries, do make annually, and cause to be printed, an exact List of all and every person who shall in that year have obtained a Certificate to practise as an Apothecary, with their respective residences attached to their respective Names.

And be it further Enacted, That all and every Sum or Sums of Money which shall be received or arise from the granting of the Certificate of Examination hereinbefore required, shall belong to, and be appropriated and disposed of by the said Master, Wardens, and Society of Apothecaries as aforesaid. in such manner as they shall from time to time direct and deem most expedient.

And be it further Enacted, That all Sum and Sums of Money arising from Conviction and recovery of Penalties for Offences committed against the Authorities and Provisions of this Act, shall be applied and disposed of in manner following, (viz.) One Half thereof to the Informer or Informers, and One Half thereof to the said Master, Wardens, and Society of Apothecaries as aforesaid, to be appropriated

and disposed of by them in such manner as they shall deem most expedient.

And be it further Enacted, That all Penalties and Forfeitures by virtue of this Act imposed, (the manner of levying and recovering whereof is not otherwise hereby particularly directed, shall, if such Penalties and Forfeitures shall exceed the Sum of Five Pounds, be recovered by Action or Suit at Law, in the Name of the Master, Wardens, and Society of the Art and Mystery of Apothecaries of the City of *London*, in any of His Majesty's Courts of Record in *England* or *Wales*, wherein no Essoign, Protection, or Wager at Law, or more than one Imparlance shall be allowed; and if such Penalty or Forfeiture shall amount to less than the Sum of Five Pounds, then the same shall be levied and recovered by Distress and Sale of the Goods and Chattels of the Offender, by Warrant under the Hand and Seal of any Justice of the Peace acting for any County, City, Town, or Place where the Offence shall be committed (which Warrant such Justice is hereby empowered and required to grant upon the confession of the Party, or upon the Evidence of any credible Witness upon Oath; and which Oath such Justice is hereby empowered to administer); and the overplus (if any), of the Money arising by such Distress and Sale, shall be returned upon demand to the Owner of such Goods and Chattles, after deducting the Costs and Charges of making, keeping, and selling the Distress; and in case sufficient Distress shall not be found, or such Forfeitures and Penalties shall not be paid forthwith, it shall be lawful for such Justice, and he is hereby authorized and required, by Warrant under his Hand and Seal, to cause the Offender to be committed to the Common Gaol for the County, City, Town, or Place, where the Offence shall be committed, there to remain without Bail or Mainprize for any time not exceeding One Calendar Month, unless such Penalties, and Forfeitures, and Costs, shall be sooner fully paid and satisfied.

And be it further Enacted, That where any Distress shall

be made for any Sum of Money to be levied by virtue of this Act, the Distress itself shall not be deemed unlawful, nor the Party or Parties making the same be deemed a Trespasser or Trespassers, on account of any defect or want of Form in the Notice or Information, Summons, Conviction, Warrant, or Distress, or other proceeding relating thereto; nor shall the Party or Parties distraining be deemed a Trespasser or Trespassers *ab initio*, on account of any irregularity which shall be afterwards done by the Party or Parties so distraining; but the person or persons aggrieved by such irregularity, may recover full satisfaction for the special damage in an Action upon the Case.

Provided always, and be it further Enacted, That nothing in this Act contained shall extend, or be construed to extend, to prejudice, or in any way to affect the trade or business of a Chemist and Druggist, in the buying, preparing, compounding, dispensing, and vending Drugs, Medicines, and Medicinable Compounds, wholesale and retail; but all persons using or exercising the said trade or business, or who shall or may hereafter use or exercise the same, shall and may use, exercise, and carry on the same trade or business in such manner, and as fully and amply to all intents and purposes, as the same trade or business was used, exercised, or carried on by Chemists and Druggists before the passing of this Act.

Provided always, and be it further Enacted, That nothing in this Act contained, shall extend or be construed to extend to lessen, prejudice, or defeat, or in any wise to interfere with any of the Rights, Authorities, Privileges, and Immunities heretofore vested in, and exercised and enjoyed by either of the Two Universities of *Oxford* or *Cambridge*, the Royal College of Physicians, the Royal College of Surgeons, or the said Society of Apothecaries respectively, other than and except such as shall or may have been altered, varied, or amended in and by this Act, or of any Person or Persons practising as an Apothecary previously to the First Day of August, One Thousand Eight Hundred

and Fifteen; but the said Universities, Royal Colleges, and the said Society, and all such Persons or Person, shall have, use, exercise, and enjoy all such Rights, Authorities, Privileges, and Immunities, save and except as aforesaid, in as full, ample, and beneficial a manner to all intents and purposes, as they might have done before the passing of this Act, and in case the same had never been passed.

Provided always, and be it further Enacted, That no Action or suit shall be brought or prosecuted against any Person or Persons, Body or Bodies Politic, Corporate or Collegiate, for any thing done in pursuance of this Act, after Six Calendar Months next after the fact committed; or in case there shall be a continuation of Damages, then after Six Calendar Months next after the doing or committing such Damage shall have ceased, and not afterwards. And every such Action or Suit shall be laid and brought in the County where the matter in dispute shall arise, and not elsewhere; and the Defendant and Defendants in every such Action or Suit, shall or may, at his, her, or their election, plead specially the General Issue, and give this Act, and the Special Matter, in Evidence, at any Trial to be had thereupon, and that the same was done in pursuance, and by the authority of this Act. And if it shall appear to have been so done, or if any such Action or Suit shall have been brought before Twenty-one Days' Notice shall have been given, or sufficient satisfaction made or tendered, as aforesaid, or shall be brought in any other County or Place than as aforesaid, then, and in every such case, the Jury shall find for the Defendant or Defendants; and upon such Verdict, or if the Plaintiff or Plaintiffs shall become Non-suit, or suffer a discontinuance of his, her, or their Action or Suit, after the Defendant or Defendants shall have appeared, or if a Verdict shall pass against the Plantiff or Plaintiffs, or if upon Demurrer or otherwise, Judgment shall be given against the Plaintiff or Plaintiffs, then the Defendant or Defendants shall have Double Costs, and shall have such remedy for recovering the same, as any Defendant

hath for recovering Costs of Suit in any other Cases by Law.

And be it further Enacted, That this Act shall be deemed and taken to be a Public Act, and shall be judicially taken notice of as such, by all Judges, Justices, and others, without being specially pleaded.

A Royal Charter granted to the Apothecaries of London 30 Maii 13 Jacobii.

(From Goodall's Collection, p. 119.)

Rex omnibus ad quos &c. salutem. Cum antehac per Letteras nostras Paten' sub magno sigillo nostro Anglie confect' geren' dat apud Westm' nono die Aprilis Anno regni nostri Anglie Francie et Hibernie quarto & Scocie de gratia nostra speciali voluerimus ordinaverimus & concesserimus quod omnes et singuli liberi homines mysterii Grocer' & Pharmacopol' civitat' London & Successores sui deinceps in perpetuum pro meliori ordine gubernatione et regimine hominum myster' Grocer' & Pharmacopol' Civitatis London ac pro utilitate commodo et relevamine bonorum et proborum ac formidine et correctione malorum dolorosorum et improborum forent et essent vigore earundem Litterarum Paten' unum corpus corporatum et politicum in re facto et nomine per nomen Custod' & Communitatis myster' Grocer' Civitat' London et eosdem per nomen Custod' et Communitat' myster' Grocer' Civitat' London unum corpus corporatum & politicum in re facto et nomine realiter & ad plenum pro nobis heredibus & successoribus nostris per easdem Litteras nostras paten' adtunc exereximus fecerimus ordinaverimus constituerimus & declaraverimus & quod per idem nomen successionem h'erent perpetuam prout per easdem Litteras nostras Patent' (inter

alia) plenius liquet et apparet. Jam vero quum nobis sit demonstratum ex parte dilectorum subditorum Pharmacopol' Civitat' nostre London necnon nobis adfirmatum & approbatum per dilectos nobis Theodorum de Mayerne & Henricum Atkins in Medicinis Doctores Medicos Nostros discretos et fideles Quod hiisce proximis annis quamplurimi empyrici et homines ignari & inexperti in Civitate nostra London ac ejusdem Suburbiis inhabitant et commorantes qui in Pharmacopoli arte & mysterio hand instituti sed in eadem imperiti & rudes quamplurima insalubria nociva falsa corrupta perniciosa faciunt & componunt medicamenta eademque in plurimis hujus regni nostri Anglie partes vendunt & assidue transmittunt in convitium et opprobrium non solum Medicine scientie illius colende Medicorumque hujus regui nostri Anglie literat' eandem profitentium necnon Pharmacopœiorum Civitat' nostre London in eadem arte & mysterio educat' & expert verum eciam in subditor' nostror' pericula et assidua vite discrimina. Cumque ad jura nostra regia & regimen supremum pro universos subdit' nostros singulasque regni nostri partes membra et societates temperamus & complectimur spectat ut pro bono publico & temporum ratione novas Societates atque nova Corpora corporat' et politica creare erigere instituere & superinducere ad beneplacitum nostrum possumus tam ex personis que prius plane seperat' & in null' corpus redact' & collect' fuerunt quam ex membris Corporum corporat' veter' ubi hoc ad melius regimen populi nostri videbitur expedire. Nos igitur considerantes officii nostri Regii munus esse subditorum nostrorum saluti et bono publico omnibus viis & modis providere & consulere ac nobiscum perpendentes quomodo improborum istorum hominum conatibus tempestive occurramus (de advisament' Consilii nostri in legibus eruditi) apprime necessarium duximus Pharmacopæios Civitat' nostra London ab hominibus liberis myster' Grocer' ejusdem disunire disgungere separare & dissociare ac easdem Pharmacopœios per seipsos solum et divisum ac ab hominibus liberis myster' Grocer' predict' ad omnes intentiones & proposit'

disunitos & separatos in unum Corpus corporat' & Politicum erigere creare & constituere ad quos omni futuro tempore incommodorum istorum cura & correctio demandata & commissa foret. Ita tamen ut superior' ac general' regimen' Civitat' nostre London & Magistrat' ejusdem in modum aliarum Societat' subjiciantur. SCIATIS igitur quod nos dilectorum & fidelium Medicor' nostror' Theodori de Mayerne & Henrici Atkins necnon Pharmacopœiorum predict' precibus inclinati potissimum verò ex Regali nostra cura & solicitudine Statum Reipublice promovendi ac bonum publicum procurandi ut Empiricorum & hominum ignor' & inexpert' predictor' inscitia temeritasque compiscatur unde plurima incommoda et pericula rudi & credule plebi assidue oriantur. Ac ut Pharmacopœi inferius nominati tam a predicto Corpore politico liberorum hominum myster' Grocer' Civitat' London quam a quibuscunque aliis corporibus Politicis Societat' sive Communitat' quarumcunque aliar' artium facultat' sive myster' in eadem Civitate nostra London disuniantur separentur & disjungantur ac in Corpus unum Politicum & Corporatum per seipsos per nos facti constituti & creari imposterum perpetuis futuris temporibus ad omnia proposita & intentiones sint et remaneant quam pro aliis causis urgentibus nos specialiter moventibus de gra' nostra speciali ac ex certa scientia & mero motu nostris volumus ac per presentes pro nobis heredibus & successor' nostris Willielmo Besse, Edmundo Philips *(et* 114 *aliis nominatis)* ac omnibus aliis personis quibuscunque subditis nostris naturalibus in arte facultate sive mysterio Pharmacopœior' educat' & perit' eandemque artem facultatem sive mysterium hoc tempore exercen' sive existen' liberis hominibus myster' Grocer' Civitat' London ac cum eisdem conjunctim & promiscue in unum Corpus corporatum & Communitat' antehac per nos seu per aliquem vel aliquos Progenitor' nostrorum fact' incorporat' sive constitut' Quod ipsi et eorum unusquisque una cum omnibus et singulis eorum Apprenticiis qui ante dat' Presencium coram Custod' myster' Grocer' predict' seu coram Custod' sive Magistris aliquar'

aliar' artium facultat' sive myster' in Civitat' London alicui Pharmacopœio sive aliquibus Pharmacpœiis posuerunt seipsos Apprenticios tam a predicto Corpore Politico & Communitat' liberorum hominum myster' Grocer' predict' quam ab omnibus aliis Corpor' Politicis Communitat' sive Societat' aliquar' aliar' artium facultat' sive myster' in Civitat London quibuscunque disuniantur separentur divellantur disjungantur ac dissociantur eosdemque Pharmacopœios & eorum quemlibet ante nominat' sive mencionat' una cum omnibus & singulis eorum Apprenticiis predict' ex regali nostra prerogativa & Jure regio disunimus separamus divellimus disjungimus & dissociamus & eosdem Pharmacopœios una cum omnibus & singulis eorum Apprenticiis predict' virtute harum Literarum nostrarum Paten' immunes liberos acquietat' exoneratos & penitus exemptos (ad omnia proposita et intentiones) quam de et ab omnibus jurament' Jurisdictionibus Potestat' Authoritat' Statut' Ordinationibus Constitution' Supervis' Scrutin' Summonition' Convocationibus Conventionibus Regim' Gubernationibus Correction Impositionibus Taxation' Collection' denarion' solutionibus & Oneribus Finibus amerciament' imprisonament' districtionibus penis & penilitat' quibuscunque Custod' & Communitat myster' Grocer' predict' pro tempore existen' aut eorum successor' quam alior' quorumcunque Corpor' Politicor' Communitat' sive Societat' in Civitat' nostra London & successor' suorum per presentes volumus esse & remanere deinceps imperpetuum aliquibus Statut' Act' Parliament' Ordination' Provisionibus Consuet' Concession' Confirmation' Privileg' Chart' aut Litteris paten' nostri vel aliquorum Progenitor' nostrorum Custod' & Communitat' myster' Grocer' London predict' fact' in contrarium inde non obstant'. Et ulterius de ampliori gra' nostra speciali & ex certa scientia et mero motu nostris ut ars myster' sive facultat' Pharmacopœie jam diu collapsa & despecta melius ad amplitudinem dignam promoveatur pro nobis hered' & successoribus nostris concedimus per presentes prefatis Willielmo Besse, Edmundo Phillips (&ci * * *) ac omnibus & singulis aliis per-

sonis quibuscunque in arte myster' sive facultat' Pharmacopol' educat' & perit' eandemque artem myster' seu facultatem exercentibus modo existen' liberis hominibus myster' Grocer' predict' aut existen' liberis hominibus aliquar' aliarum artium myster' sive facultat' in Civitat' London (dummodo in arte & facultate Pharmacopol' educat' & expert' fuerint) quod ipsi omnesque hujusmodi liberi homines ejusdem artis myster' sive facultat' Pharmacopol' de et in Civitat predict' & in suburbiis ejusdem & infra septem miliar' Civitat' predict' sint & erunt unum Corpus corporatum & Politicum in re facto & nomine per nomen Magistr' Custod' & Societat' artis & myster' Pharmacopol' Civitat' London. Ac eos per nomen Magistri Custodum & Societatis artis et myster' Pharmacopol' Civitat' London in unum Corpus corporatum & Politicum in re facto et nomine realiter et ad plenum pro nobis & successor' nostris erigimus facimus ordinamus constituimus creamus & declaramus per presentes. Et quod per idem nomen successionem habeant perpetuam. Et quod ipsi & successores sui per nomen Magistri Custod' & Societatis artis mysterii Pharmacopol' Civitat' London sint & erunt perpetuis futuris temporibus persone habiles & in lege capaces ac Corpus Corporatum & Politicum & in lege capax ad habend' perquirend' possidend' gaudend' & retinend' Maner' Messuagia terras tenementa libertat' privileg' Franches' Jurisdiction' & Hereditamenta quecunque cujuscunque generis nominis natur' qualitat' vel speciei fuerint sibi & successor' suis in feodo simplici & perpetuitat' sive pro termino anni vel annorum aut aliter quocunque modo. Ac etiam bona & Catalla & quascunque alias res cujuscunque nominis nature generis qualitat' sive speciei fuerint. Necnon ad concedend' dimittend' alienand' assignand' & disponend' maner' terr' tenementa & hereditamenta & ad omnia & singula al' fact' & res faciend' & exequend' per nomen predict'. Et quod per idem nomen Magistri Custod' & Societat' artis & myster' Pharmacopol' Civitat' myster' London placitare & implacitari respondere & responderi defendere & defendi valeant & possint in quibuscunque Curiis. Placit' & locis ac coram quibuscunque Judicibus

& Justiciariis ac aliis personis & officiar' nostris ac heredum & successor' nostrorum in omnibus & singulis actionibus placitis sect' querel' causis mater' & demand' quibuscunque cujuscunque sint aut erint generis qualitat' aut speciei eisdem modo & forma prout aliqui alii ligei nostri Anglie persone habiles & capaces in lege sive aliquod aliud Corpus corporatum et Politicum infra Regnum nostrum Anglie habere perquirere recipere possidere & gaudere retinere dare concedere dimittere alienare assignare & disponere placitare & implacitari respondere & responderi defendere & defendi facere permittere sive exequi possint aut valeant. Et quod iidem Magister Custod' & Societas artis & mysterii Pharmacopol' Civitat' London predict' habeant imperpetuum Commune Sigillum pro causis & negotiis suis ac successor' suor' quibuscunque agend' deservitur'. Et quod bene liceat & licebit eisdem Magistro Custod' & Societat' artis & mysterii Pharmacopol' London predict' & successor' suis sigillum illud ad libitum suum de tempore in tempus frangere mutare & de novo facere prout eis melius fieri videbitur. Et ulterius volumus & ordinamus ac per presentes pro nobis hered' & successor' nostris concedimus prefat' Magistro Custod' & Societat' artis & mysterii Pharmacopol' predict' & successor' suis quod de cetero imperpetuum perpetuis futuris temporibus sit & erit unus de Societatis artis & myster' Pharmacopol' predict' in forma in hiis presentibus mencionat' eligend' & nominand' qui nominabitur & vocabitur Magister artis & Societatis predict' Ac quod similiter sint & erunt duo de Societate artis & myster' predict' in forma in his presentibus express' eligend' & nominand' qui erunt & nominabunter Custodes Artis myster' & societat' predict'. Ac eciam quod similiter sint & erunt viginti & unus de Societate predict' in forma in hiis presentibus inferius similiter mencionat' eligend' qui erunt & nominabuntur Assistantes Artis & Societatis Pharmacopol' Civitat' London ac de tempore in tempus erunt assistentes & auxiliantes Magistro & Custod' Mysterii & Societat' predict' pro tempore existen' in omnibus causis rebus & materiis dict' Magr' & Societat'

tangen' sive concernen.' Et ulterius volumus ac per presentes pro nobis hered' & successoribus nostris concedimus prefatis Magistro Custod' & Societat' artis & myster' Pharmacopol' Civitat' London predict' & successor' suis quod bene liceat & licebit eisdem Magistro Custod' & Societat' & Successor' suis habere perquirere retinere & appuntare quandam Aulam sive Domum Conciliar' infra Civitat nostram London Quodque idem Magr' Custod' myster' predict' vel aliqui duo eorum quorum Magistrum pro tempore existenti unum esse volumus quoties eis opportunum & necessarium fore videbitur convocare & tenere infra eandem Aulam sive domum quandam Curiam sive Convocationem de eisdem Magistro Custod' & Assistent' predict' ad numerum tredecem personarum vel plurium (quorum Magistrum & unum Custod' myster' & societat' predict' pro tempore existen' ut prefertur duos esse volumus) ad libitum & licite possint & valeant perpetuis futuris temporibus. Quodque in eadem Curia sive Convocatione tractare referre consultare consulere & decernere valeant & possint de Statutis Legibus Articulis Ordinationibus & Constitutionibus myster' & societat' predict' ac bonum regimen statum & gubernationem eorundem tangen' & concernen' juxta eorum sanas discretiones vel juxta sanas discretiones majoris partis eorundem (quoram magistrum & unum Custod' myster' & societat' predict' pro tempore existen' duos esse volumus) sic ut prefertur congregat'. Et ulterius volumus ac per presentes pro nobis hered' & successor' nostris concedimus prefat' Magistro Custod' & Societati artis sive mysterii Pharmacopol' Civitat' London & successoribus suis quod Magister Custodes & Assistantes myster' predict' pro tempore existen' ad numerum tredecem personarum vel plurium (quorum predict' Magistrum pro tempore existen' unum esse volumus) super Summonitionem publicam inde fiend' ad hoc congregat' in Aula sive domo societatis predict' habeant & habebunt plenam potestatem facultatem & authoritatem condend' constituend' ordinand' & faciend' de tempore in tempus Leges Statuta Constitutiones Decreta & Ordinationes

rationabiliter inscript' quecunque que eis aut majori parti eorundem (quorum Magistrum myster' & societatis predict' pro tempore existen' unum esse volumus) bona salubria utilia honesta & necessaria juxta eorum sanas discretiones fore videbuntur pro bono regimine & gubernatione eorundem Magisti Custod' Assisten' & societatis myster' Pharmacopol' predict' ac omnium & singulorum aliar' personar' artem sive myster' Pharmacopol' infra Civitat' London predict' libertates & suburbia ejusdem ac infra septem Miliaria ejusdem Civitat' exercent' & occupant' ac pro declaratione quo modo & ordine iidem Magister Custodes & Societas ac omnes & singuli Apprenticii Officiar' & Ministri myster' & societat' predict' in officiis functionibus minister' Tyrociniis artific' & negotiis suis infra Civitat' predict' ac libertates & suburbia ejusdem ac infra septem miliaria ejusdem Civitat' sese habebunt gerent & utentur pro uberiori bono publico communi utilitate & bono regimine myster' & societat' predict' ac gubernatione earundem ac rebus & causis aliis quibuscunque myster' & societat' predict' tangen' seu quoquo modo concernen.' Proviso semper quod pro tot & tal' Ordinationibus que medicamenta aut compositiones & usum earundem concernent' advocabunt de tempore in tempus President' & quatuor Censores seu Gubernat' Colleg' & Communitat' Medicorum London aut alios Medicos per Presidentem predict' nominand' pro avisamento in hac parte. Quodque iidem Magister et Custodes & Assistantes myster' predict' pro tempore existen' ad numerum tredecim personarum vel plurium (quorum Magistrum myster' predict' pro tempore existen' unum esse volumus) quotiescunque hujusmodi Leges institutiones Jura Ordinationes & Constitutiones fecerint condidirint ordinaverint vel stabiliverint hujusmodi & tales penas punitiones & penelitat' per fines & amerciamenta vel per eorum utrumque erga & super omnes delinquentes contra hujusmodi Leges Institutiones Jura Ordinationes & Constitutiones sive eorum aliquod sive aliqua qual' & que eisdem Magistro Custod' & Assisten myster' predict' pro tempore existen' vel majori parte eorundem (quorum

Magistrum myster' & societatis predict' pro tempore existen' unum esse volumus) necessor' requisit' & opportun' pro observatione earum legum ordinationum & constitutionum melius fore videbitur facere ordinare limitare & providere possint. Ac quod iidem Magister Custodes & societas myster' predict' & successores sui eadem fines et amerciamenta per ministros proprios eorundem Magistri Custod' & Societatis pro tempore existem' per discretionem vel aliter secundum leges & consuetudines regni nostri Anglie levare habere & capere possint & valeant ad usum Magistri Custodum & societat' predict' & successor' suorum absque impedimento nostri heredum & successor' nostrorum aut alicujus vel aliquorum Officiar' vel Ministror' nostror' heredum vel sucessor' nostrorum & absque aliquo computo nobis heredibus vel successor' nostris inde reddend' seu faciend'. Que omnia & singula Ordinationes Jura & Constitutiones sic (ut prefertur) fiend' observari volumus sub penis in iisdem continend'. Ita tamen quod leges constitutiones fines & americamenta hujusmodi sint rationabilia & non sint repugnan' nec contrarian' legibus Statut' consuetudinibus sive Juribus regni nostri Anglie. Et pro meliori executione voluntatis & concessionis nostri in hac parte assignavimus nominavimus creavimus & constituimus dilectos nobis predictum Edmund' Phillips fore & esse primum & modern' Magistrum artis sive myster' & societat' predict' ac etiam predict' Stephanum Higgins & Thomam Jones fore & esse primos & modernos Custodes mysterii & societatis predict' continuand' in eisdem officiis a dat' presentium usque ad vicessimum diem Augusti proxim' sequen' & deinde quousque tres alii ad officia illa Magistri & Custodum artis sive mysterii & societatis predict' debito modo electi & perfecti fuerint juxta ordinationes & provisiones in hiis presentibus express' & declarat' si iidem Edmundus Phillips, Stephanus Higgins & Thomas Jones tam diu vixerint (nisi interim pro mala gubernatione aut male se gerend' in ea parte aut pro aliqua alia causa rationabili ab officiis illis amoti erunt aut eorum aliquis amotus erit) Et assignavimus eciam ac nominavimus creavimus constituimus

& fecimus ac per presentes pro nobis heredibus & successoribus nostris assignamus creamus nominamus constituimus & facimus dilectos nobis predict Johannem Wolfgangfumler * * &ci * * in arte & mysterio Pharmacopol' edoct' educat' & expert' fore' & esse primos et modernos Assistentes ejusdem mysterii & societatis Pharmacopol' continuand' in eisdem officiis & locis durant' vitis suis naturalibus nisi interim pro mala qubernatione seu male se gerend' in ea parte aut pro aliqua alia causa rationabili amoti fuerint aut eorum aliqui vel aliquis amotus erit vel amoti erunt. Qui quidem Assistentes mysterii & societat' predict' sacrimenta sua corporalia coram Francisco Bacon Milite Attornat' nostro General' Henrico Yelverton Milite Solicit' nostro generali Theodoro de Mayerne & Henrico Atkins in Medicinis Doctoribus & Johanne Towneley Armigero vel coram duobus eorum Quibus quinque vel eorum duobus plenam potestatem & authoritatem sacramenta predict' Assisten' myster' predict' dare & administrare damus & concedimus per presentes infra quadraginta dies post dat' presentium ad officia sua predict' bene & fideliter exequend' prestabunt. Ac eciam predict' Magister myster' predict' & Custodes myster' & societat' predict' sacramenta sua corporalia coram Assisten' myster' predict' vel majore parte eorundem infra quinquaginta dies post dat' presentium bene & fideliter ad dictum officium Magistri & Custod' myster' & societat' predict' exequend' in omnibus eisdem Officiis tangen' seu concernen' prestabunt. Et sic de tempore in tempus toties quoties Magister & Custodes Myster' & Societatis predict' elect' & perfect' fuer' antequam ad executionem predict' Officii admittantur seu eorum aliquis admittatur.

Et ulterius volumus ac per presentes pro nobis hered' & successor' nostris concedimus prefat' Magistro Custod' & Societati mysterii Pharmacopol' predict' & successor' suis quod Magister Custodes & Assistentes Mysterii & Societatis predict' pro tempore existen' & successor' sui ad numerum tredecim personar' vel plurium (si tot convenienter congregari possint) de tempore in tempus perpetuis futuris tem-

poribus potestatem & authoritatem habeant & habebunt annuatim & quolibet anno imperpetuum in & super vicessimum diem Augusti vel infra octo dies proxim' post dictum vicessimum diem Augusti eligend' & nominand' Et quod eligere & nominare possint & valeant tres de probioribus & discretioribus hominibus Societatis predict' quorum unus erit Magister & alteri duo erunt Custodes Mysterii & Societatis predict' pro uno anno integro tunc proxim' sequen' & deinde quosque tres alii probi & discreti homines myster' predict' elect' & prefect' fuerint juxta Ordinationes & Provisiones in hiis presentibus express' & declarat'.

Et ulterius volumus & per presentes pro nobis heredibus & successor' nostris concedimus prefatis Magistro Custod' & Societati Myster' Pharmacopol' Civitat' London predict' & Successor' suis Quod si contigerit Magistrum & Custodes myster' & Societat' predict' aut eorum aliquos vel aliquem aliquo tempore infra unum annum postquam ad Officia Magistri & Custod' Myster' & Societatis predict' sic ut prefertur elect' & prefect' fuerint aut eorum aliquis vel aliqui fuerit vel fuerint obire aut ab officiis amoveri (quos quidem Magistrum & Custodes ac eorum quemlibet pro mala gubernatione aut pro aliqua causa rationabili per reliquos Magist' et Custod' non offenden' vel delinquentes & Assistentes myster' & societatis predict' pro tempore existen' ad numerum tredecim personar' vel plurium de tempore in tempus amobiles esse volumus) quod tunc & toties bene liceat & licebit tantis & tot eorundem Magist' Custod' & Assistent' qui adtunc supervixerint vel remanserint ad numerum tredecim personarum vel plurium ad libitum suum unum alium vel plures alios in Magistrum & Custodem vel Custodes Myster' & Societatis predict' eligere & preficere secundum ordinationem & provisionem in hiis presentibus declarat' ad exequend' & exercend' prefat' officia Magistri & Custod' myster' & societatis predict' usque ad vicessimum diem Augusti tunc proxim' sequen' vel infra octo dies ante vicessimum diem Augusti & exinde quousque tres alii probi & discreti homines myster' & societatis predict' elect' & nomi-

nat' erunt juxta ordinationes & provisiones in hiis presentibus declarat' & express' & sic toties quoties casus sic acciderit.

Et ulterius volumus ac per presentes pro nobis heredibus & successor' nostris ordinamus & concedimus prefat' Magist' Custod' & societati mysterii predicti & suceessor' suis quod quandocunque contigerit aliquem vel aliquos de predict' viginti & uno Assisten' pro tempore existen' myster' & societatis predict' obire aut pro aliqua causa rationabili ab officiis suis Assisten' myster' & societatis predict' amoveri (quos quidem Assistentes & eorum quemlibet se non bene gerentes aut gerentem in officiis illis aut pro aliqua alia causa rationabili de tempore in tempus per Magistrum Custod' & Assisten' ad numerum tredecim personar' vel plurium qui adtunc remanserint vel supervixerint amobiles esse volumus) ad libitum suum de tempore in tempus unum alium vel plures alios de probioribus & dignioribus personis existen' de myster' & societat predict' in locum sive loca ipsius Assistentis vel ipsorum assistentium myster' & societatis predict' sic mori vel amoveri contingen' vel contingent' eligere nominare & preficere ad supplend' predictum numerum viginti & unius Assistentium predict'. Quodque ille sive illi posquam sic (ut prefertur) elect' & nominat' fuerit vel electi & nominati fuerint antequam ad executionem predict' officii Assistentis vel Assistentium myster' & societat' predict' admittantur sive eorum aliquis admittatur Sacrimentum Corporale super sacrosanct' Evangel' coram Magistro & Custod' Myster' & Societat' predict' pro tempore existen' ad officia illa recte bene fideliter & honeste exequend' & ad ea omnia secreta tenend' que in Cur' Assisten' presentia ipsius vel ipsorum erunt communicat' vel colloquut' prestabit & prestabunt & sic toties quoties casus acciderit.

Damus insuper ac per presentes pro nobis heredibus & successor' nostris concedimus prefatis Magistro Custod' & Societat' artis & myster' Pharmacopolar' predict' & successor' suis quod Magister & Custodes myster' & societat' predict' pro tempore existen' habeant & habebunt plenam potestatem & authoritatem de tempore in tempus ad tradend' & ministrand' Sacramentum Corporale super sacro-

sanct' Evangelium tam omnibus Magistris Custod' & Assisten' myster' & societat' predict' imposterum eligend' & in eadem officia sive loca ut prefertur admittend' ac omnibus Offician' myster' & societat' predict' pro debit' executione officior' suor' recte bene & fideliter in omnibus separatim officia sua tangen' sive concernen' quam omnibus Apprenticiis ac aliis liberis hominibus myster' predict' quibuscunque.

Et ulterius ut nos subditor' nostror' saluti ac bono publico quantum in nobis est consulamus ac ut pericula & incommoda illa assidue accidentia per imperitos & inexpertos dolosos & improbos homines artem Pharmacopol' predict' exercen' melius devitentur volumus & de gratia nostra speciali certa scientia & mero motu nostris per presentes pro nobis heredibus & successor' suis quod non liceat aut licebit deinceps imposterum alicui persone vel aliquibus personis quibuscunque jam existen' aut imposterum futuris liberis hominibus myster' Grocer' predict' aut aliquar' aliar' artium facultat' sive myster' in civitate London ac in eisdem arte facultate sive myster' educat' vel educand' officinam vel shoppam Pharmacopol' instruere tenere vel habere aut medicamenta quecunque facere miscere condere componere preparare propinare applicare aut administrare aut ulla medicamenta composita aut compositiones medicinales viz aquas distillatas compositas, vel olea chymica, apozemeta, syrapos conservas eclegma, electuaria, condita medicinabilia, pilulas, pulveres, trochiscos, olea, unguenta, emplastra ullo modo divendere propalare edere exercere aut venditioni aliqui personæ vel aliquibus personis quibuscunque exponere aliter quocunque modo arte facultate sive myster' Pharmacopol' aut aliqua ejus parte uti aut exercere infra septem miliaria ejusdem Civitat' sub pena quinque librarum pro quolibet mense quo hujusmodi persona sive persone artem & myster' Pharmacopol' (ut prefertur) exerceat aut exerceant contra veram intentionem harum Litter' Paten' Que quidem forisfactur' & penalit' per districtionem vel per actionem debiti in nomine Custodis Junioris pro tempore existen' prosequi aut aliter in aliquibus Curiis nostris apud Westm' de tempore in tempus leventur

& recuperentur dimidium inde ad usum predict' Magistri Custod' & Societatis myster' Pharmacopol' capiend' & applicand'.

Volumus eciam ac per presentes pro nobis heredibus & successoribus nostris concedimus prefat' Magistro Custod' & Societati myster' Pharmacopol' Civitat' London predict' & successor' suis quod nulla persona sive persone quecunque officinam aut shopam Pharmacopol' habeat teneat aut instruat habeant instruant aut artem sive myster' Pharmacopol' exerceat aut exerceant aut quecunque medicamenta faciat misceat condat componat preparet propinet applicat administret ant ulla medicamenta composita aut compositiones ullo modo divendere propalare edere exercere aut venundare alicui persone vel aliquibus personis quibuscunque infra Civitatem London & libertat' ejusdem aut infra septem miliaria ejusdem Civitat' nisi hujusmodi persona & persone per spatium septem annorum ad minus ut Apprenticius vel Apprenticii cum aliquo vel aliquibus Pharmacopol' eandem artem exercen' & libero homine ejusdem mysterii existen' educat' instruat' & edoct' fuit vel fuerint. Et postquam hujusmodi septem anni servicii sive Tyrocinii (ut prefertur) fuerint elapsi & extract' Quod tunc unusquisque talis Apprenticius coram Magistro & Custod' pro tempore existen' appareat & presentetur Ac per eosdem Magistrum & Custod' (advocat' sibi Presdent' Collegii seu Communitat' facultat' medicine London pro tempore existen' aut aliquo medico aut aliquibus medicis per dictum Presidentem nominand' & ad hoc de tempore in tempus assignand' si super monitionem inde fact' tal pred' medicus vel tal' predicti Medici adesse voluerint vel voluerit & advisament' cum eodem vel eisdem habit') circa cognitionem & electionem Simplicium & circa medicament' preparationem dispensationem tractationem commixtionem & compositionem examenetur probetur tentetur ac per eosdem Medicos Magistrum & Custodes spectatus & approbatus fuerit priusquam officinam Pharmacopol' habere tenere instruere aut medicamenta quecunque preparare facere permiscere condere componere pro-

pinare administrare propalare edere exercere divendere aut venditioni exponere aut aliter quocunque modo artem Pharmacopoli aut aliquem ejusdem partem exercere infra Civitatem London & libertat' ejusdem aut infra septem miliaria ejusdem Civitat' presumat.

Ac ulterius de uberiori gratia nostra speciali & ex certa sciencia & mero motu nostris pro meliori regimine & gubernatione omnium & singular' personarum que modo exercent aut imposterum exercebunt artem sive myster' Pharmacopol' Civitat' London seu suburbia ejusdem vel infra septem miliaria ejusdem Civitatis dedimus & concessimus ac per presentes pro nobis heredibus & successoribus nostris damus & concessimus prefat' Magistro Custod' & Societati myster' Pharmacopol' Civitat' London predict' & successor' suis Quod Magist' & Custod' myster' predict' pro tempore existen' & successores sui de cetero imperpetuum plenam potestatem & authoritatem habeant & habebunt de tempore in tempus capere & habere supervis' scrutinium examinationem gubernationem & correctionem omnium & omnimod' tam liberorum hominum quam alior' quorumcunque uten' sive exercen' artem myster' sive facultat' Pharmacopol' aut aliquam (ut prefertur) ejusdem partem infra dictam Civitat' nostram London libertat' & suburbia ejusdem Civitat' tam infra libertates quam extra ubi aliqua persona uten' sive exercen' artem mysterium sive facultatem Pharmacopœie aut aliquam ejusdem partem inhabitabit aut commorabit seu inhabitare & commorare contigerit Quodque iidem Magist' & Custod' & eorum successores aut eorum aliqui vel aliquis aut aliqui Assisten' per Magistrum & Custod' nominand' & assignand' temporibus congruis & convenien' ac modo & forma convenien' & legitim' de tempore in tempus quoties iisdem Magistro & Custodibus videbitur expedire ingredi & intrare possint & valeant in aliquam vel aliquis officinam vel officinas shopam vel shopas domum vel domos aliquar' personar' sive alicujus persone cujuscunque uten' sive exercen' artem sive myster' Pharmacopol' aut aliquam ejusdem partem infra Ci-

vitat' London Suburbia & ejusdem libertat' predict' aut infra septem miliaria ejusdem Civitat' tam infra libertat' quam extra ubi aliqua medicamenta simplicia vel composita merces drogma recept' aque distillat' olea chymica syrupi conserve eclegmata electuar' pilule pulveres trochisci olea unguenta emplastra aut aliqua alia quecunque que ad artem sive mysterium Pharmacopol' (ut prefertur) pertinent sive spectant probabiliter sive verisimiliter inveniri poterint Et ad supervidend' scrutinand' & proband' si eadem medicamenta simplicia vel composita merces drogma recept' aque distillat' olea chymica syrupi conserve eclegmata electuaria pilule pulveres trochisci olea unguenta emplastra aut aliqua alia quecunque ad artem sive mysterium Pharmacopol' predict' pertinent' sint aut erunt bona salubria medicinabilia apta & idonea ad Curam salutem & relevamen subditor' nostror' Ac eciam quod prefat' Magister & Custod' myster' predict' & Assisten' predict' pro tempore existen' ad hoc per Magistrum & Custod' nominand' & sssignand' & successores sui de tempore in tempus plenam potestatem & authoritatem habeant & virtute presentium habebunt ad examinand' & proband' omnes & singulas personas profiten' uten' sive exercen' aut qui imposterum profitebuntur utentur aut exercebunt artem sive myster' Pharmacopol' aut aliquam ejusdem partem infra predict' Civitat' London suburbia aut libertates ejusdem aut infra septem miliaria ejusdem Civitat' tam infra libertates quam extra de & concernen' eorum cujuslibet cognitione & scientia in predit' arte sive myster' Pharmacopol' Et ad omnes illos quos imposter' aut imperit' inscient' & insufficientes vel ad examinand' vigore presentium obstinatos & repuguant' in arte & myster' predicto invenient ab exercitio usu & pract' myster' sive artis predict' amovend' & prohibend' Nec non ad omnia & singula medicamenta merces drogma recept' aquas distillat' olea chymica syrupos conservas eclegmata electuaria pilulas pulveres trochiscos olea unguenta & emplastra ceteraque omnia & singula ad artem predict' pertinentia que falsa illegitima adulterat' inveterat' exoleta insalubria corrupta immedicinabilia perniciosa aut

nociva inveniunt ante delinquentium fores comburend' mulctamque eciam ac al' penas & penalitat' per fines & amerciamenta in tales delinquentes statuant exponant & exequantur secundum eorum sanas discretiones & ordinationes per ipsos & successores suos sic (ut prefertur) fiend' & constituend.'

Volentes ac per presentes pro nobis heredibus & successor' nostris firmiter injungend' precipientes & mandentes omnibus & singulis Majoribus Justiciar' Ballivis Constabular' & omnibus aliis officiar' ministris & subditis nostris quibuscunque quod sint assistentes auxiliantes & confortantes prefat' Magistro Custod' & Assistan' myster' & societates Pharmacopol' predict' & eorum cuilibet & successor' suis ad faciend' gaudend' habend' & exequend' ea omnia & singula per nos prefat' Magistro Custod' & Societati & Successor' suis per has literas nostras Paten' concess' & quamlibet sive aliquam inde partem & parcell'.

Et ulterius volumus ac per presentes de ampliori gratia nostra speciali certa scientia & mero motu nostris pro nobis hered' & successor' nostris concedimus prefat' Magistro Custod' & Societati myster' Pharmacopol' Civitat' London predict' & successor' suis Quod ipsi prefati Magist' Custodes & Societas myster' Pharmacopol' predict' habeant teneant retineant & gaudeant ac habere retinere & gaudere valeant & possint tot tanta talia eadem hujusmodi & consimil' Franches' privilegia consuetudines immunitates acquietan' profima commoditates increment' advantag' & emolumenta quecunque in aromatibus Pharmacis Drogmis & aliis rebus & materiis quibuscunque ad artem sive myster' Pharmacopol' spectan' & pertinen' emend' mercand' seu comparan' quot' quant' qual' & que ac in tam amplis modo & forma prout antehac unquam habuerunt tenuerunt & gavisi fuerunt aut habere gaudere & tenere aliquo modo debuerunt quando cum predict' liberis hominibus myster' Grocer' remanser' ac unum Corpus corporatum & Politicum promiscue & indivisim cum eisdem fecerunt & fuerunt.

Et ulterius volumus ac per presentes pro nobis heredibus & successor' nostris concedimus & licentiam specialem libe-

ramque & licitam facultat' potestatem & authoritatem damus prefat' Magistro Custod' & Societati mysterii sive artis Pharmacopol' predict' & successor' suis habend' recipiend' & perquirand' sibi & successor' suis imperpetuum' mauer' messuag' terr' tenementa prata pascua pastur' boscos subboscos Rectorias Decim' reddit' reversiones & alia hereditamenta quecunque infra regnum nostrum Anglie seu alibi infra dominia nostra tam de nobis heredibus & successor' nostris quam de aliqua alia persona sive aliquibus aliis personis quicunque (que de nobis hered' & successor' nostris non tenentur immediate in Capite vel per servicium militare) dummodo eadem maner' messuag' terr' tenementa prat' pasc' pastur' bosc' subbosc' Rector' decim' reddit' reversion' servic' & hereditamenta sic per ipsos habend' recipiend' & perquirend' non excedant in toto clarum annuum valorem quadragint' librarum per ann' ultra omnia onera & repris' Statut' de terr' & tenementis ad manum mortuam non ponend' aut aliquo Statuto Actu Ordinatione vel Provisione antehac fact' ordinat' sive provis' aut aliqua alia re causa vel materia quacunque in contrarium inde in aliquo modo non obstan'.

Damus eciam & per presentes pro nobis hered' & successor' nostris concedimus cuicunque subdito nostro sive aliquibus subditis nostris hered' & successor' nostrorum licentiam specialem liberamque & licitam potestatem facultatem & authoritat' Quod ipsi sive eorum aliquis sive aliqui maner' messuag' terr' tenementa prat' pasc' pastur' bosc' subbosc' Rect' decim' reddit' reversiones servicia & alia hereditamenta quecunque que non tenentur de nobis hered' & successor' nostris immediate in Capite vel aliter per servic' militare prefatis Magistro Custod' & Societati mysterii predict' & successor' suis dare concedere vendere legare vel alienare possint & valeant. Ita quod omnia predict' Maner' Messuag' terr' tenementa prat' pasc' pastur' bosc' subbosc' Rector' decim' reddit' reversiones servicia & alia hereditamenta sic eisdem Magistro Custod' & Societati myster' & artis predict' & successor' suis virtute presentium dand'

concedend' legand' vel alienaud' non excedant in toto clarum annuum valorem quadragint' librarum per ann' ultra omnia onera & repris' Statut' de terr' & tenement' ad manum mortuam non ponend' aut aliqua alia re causa vel materia quacunque antehac habit' fact' edit' ordinat' sive provis' in contrarium inde in aliquo non obstant'.

Volumus eciam & per presentes pro nobis hered' & successor' nostris concedimus prefatis Magistro Custod' & Societati myster' sive artis Pharmacopol' Civitat' London' predict' & successor' suis Quod prefat' Magist' Custod' & Assisten' pro tempore existen' vel eorum successor' vel major pars eorundem de cetero imperpetuum nominare & eligere possint unum probum & idoneum virum qui erit & nominabitur Communis Clericus Societatis predict' Quodque talis Clericus antequam ad officium illud exequend' admittatur Sacramentum Corporale coram Magistro & Custod' Societatis predicte pro tempore existen' ad officium illud predictum secundum ejus scienciam in omnibus illud tangen' recte & fideliter exequend' prestabit Et quod post hujusmodi Sacramentum sic prestitum officium illud exerceat & utatur durante beneplacito Magistri Custod' & Assisten' societatis predict' pro tempore existen' aut majoris partis eorundem quorum Magist' artis & myster' predict' pro tempore existen' unum esse volumus.

Ac ulterius volumus ac per presentes pro nobis hered' & successor' nostris concedimus prefatis Magistro Custod' & Societati myster' Pharmacopol' predict' & successor' suis quod prefat' Magist' Custodes & Assistentes pro tempore existen' & eorum successores vel major pars eorundem de tempore in tempus de cetero nominare & eligere possint & valeant unum aptem & idoneum hominem qui erit & nominabitur Bedell' societatis predict' Quodque talis Bedell' sic (ut prefertur) electus & nominat' antequam ad officium illud exequend' admittatur Sacramentum Corporale coram Magistro & Custod' Societatis predict' pro tempore existen' ad officium illud predictum in omnibus illud tangen' recte & fideliter exequend' prestabit Et quod post hujusmodi Sacra-

mentum sic prestitum officium illud exerceat & teneat duran' beneplacito Magistri Custod' & Assisten' predict' & Successor' suor' pro tempore existen' (quorum Magistrum artis & myster' predict' pro tempore existen' unum esse volumus.)

Et denique volumus ac regiam nostram intentionem esse per presentes declaramus quod he Litere nostre paten' seu aliquod in eis non cedent in prejudicium Presidentis & Collegii sive Communitatis Medicor' Civitat' London nec ad eorum Presidentis & Collegii sive Communitatis & Successor' suor' Jurisdictionem authoritatem supervis' aut correctionem in Pharmac' Civitat' London tollend' infringend' aut dirimend'. Sed quod iidem Presidens & Communitas Medicor' omnesque & singuli medici de eodem Collegio sive Communitate & Successores sui sicut & Medici Regis Regine & Principum imposserum debeant & pro arbitrio suo possint artem medicam in omnibus suis partibus exercere & insuper gaudebunt utentur & fruentur & gaudere uti & frui valeant & possint eisdem & consimil' Jurisdictionibus authoritat' supervis' & Correctionibus ac omnibus aliis potestatibus privileg' & libertat' qualibus unquam antehac Pharmacopol' usi & gavisi fuerunt & preterea generaliter omnibus aliis authoritatibus privilegiis & potestatabus ipsis quandocunque vel quacunque de causa antehac concess' ratione vel pretextu aliquar' Literar' Paten' per nos seu per aliquos vel aliquem progenitor' nostror' aut ratione vel pretextu alicujus Actus Parliament' vel aliquor' Actuum Parliamentor' aut aliquo alio regali modo quocunque eisdem President' & Collegio sive Communitat' Medicor' & Successor' suis dat' concess' seu confirmat' Volumus nihilominus & ordinamus per presentes quod in quocunque casu Presidens & Colleg' habebunt gaudebunt & exercebunt consimilem potestatem & authoritatem advocandi sibi Magistrum & Custodes Pharmacopol' predict' Absque eo quod omnino licebit imposterum eisdem Medicis aliquos myster' Grocer' predict' advocare ad hujusmodi scrutinium Aliquo in hujusmodi Statut' in contrarium in aliquo non obstant'. Proviso

eciam quod he Litere nostre Patentes seu aliquod in eisdem concess' aut content' non cedent in prejudicium Civitat' nostre London seu libertat' ejusdem neque ullo modo derogabunt libertat' Franches' Regimin' Jurisdiction' aut consuetud' ejusdem Civitatis.

Et denique volumus & intentionem nostram esse declaramus quod Chirurgi experti & approbati eorum artem facultatem exercere possint omnesque & singuli eorum practica sibi propria uti & frui valeant quantum ad compositionem & applicationem medicamentor' externor' solumodo pertinet & spectat. Ita tamen ut ea medicamenta minime vendant aut venditioni aliis exponant secundum morem vulgarem Pharmacopol' Civitat' nostre London Eo quod expressa mentio de vero valore annuo aut de certitudine premissor' sive eorum alicujus aut de aliis donis sive concessionibus per nos seu per aliquem Progenitor' vel Antecessor' nostror' prefat' Magistro Custod' & Societati myster' Pharmacopol' Civitat' London predict' ante hec tempore fact' in presentibus minime fact' exist' seu aliquo Statuto Actu Ordinatione Provisione Proclamatione sive Restrictione in contrarium inde antehac habit' fact' edit' ordinat' seu provis' aut aliqua alia re causa vel materia quacunque in aliquo non obstant'. In cujus rei testimonium has Literas nostras fieri facimus Patentes. Teste meipso apud Westm' Tricessimo die Maii Anno Regni Nostri Anglie Franc' & Hibernie tertio decimo & Scocie quadragesimo octavo.

Per breve de privato sigillo.

CARTRIGHT.

NOTE. The e for æ in quæ &c and the c for t in etiam &c are so printed in our original.

Royal Letter to the College of Physicians.

CHARLES R

Trusty & welbeloved wee greet you well
Whereas we have been informed That there are several pretended Physicians & Doctors graduated in the Universitys beyond the Seas who by indirect means endeavour to be received into that our Royal Colledge as Honorary Fellows, without incorporation into either of our Universities or previous Examination & approbation, according as it is expressly required by y^e^ Statutes to y^e^ great prejudice of y^e^ ffellows of or said Colledge & their Successors & of the Priveledges & immunityes granted to them by or Royal predicessors & orself Wee having taken the same into or Royal Consideration have thought fit *to signifye or pleasure* to you, & doe accordingly *direct you* not to admit any person whatever as a Fellowe of the Society & to enjoy y^e^ priviledges of or s^d^ Colledge that hath not had his Education in either of or Universityes of Oxford or Cambridge kept his Act for D^r^ in Physick & don his Exercises accordingly, or that is not encorporated & licenced there haveing first taken the Oathes of Allegiance & Supremacy, & haveing been by you afterward examined & approved of according to the Statutes And to the Intent this or pleasure may be the better observed wee doe likewise *hereby require you* to cause these or Letters to be entered upon the Registe of or said Colledge & so wee bid you ffarewell, Given at or Court at Whitehall Febr. 12^th^ 1674 in the 26^th^ year of or Reighn.

T. WILLIAMSON.

To our trusty and well beloved the Lord Mayor of our City of *London* for the time being and to the Deputy Lieutenants and Commissioners of the Militia of London and Westminster that now are and hereafter shall be, and to all other Officers and Ministers whom it may concern.

CHARLES R

Whereas in conformity to several Grants and Charters made by our Royal Progenitors Kings of *England* unto the College of Physicians in our City of *London*, We have been pleased of our especial Grace and favour to confirm all their ancient Privileges and humanities (with the addition of some further Powers and Clauses for the regulation of that faculty) by our Letters Patent bearing date the 26th of March in the 15th year of our Reign; Wherein amongst other things it is expresly provided and by us granted that every Physician who is or shall be a Member of the said College be free and exempt and discharged of and from all Watch and Ward, and of and from bearing and providing Arms within our Cities of *London* and *Westminster* or of either of them or within 7 miles compass thereof: We have thought fit hereby to acquaint you therewith and with our pleasure thereupon; Willing and Requiring you in your several Places and Stations to give effectual orders from time to time that the said exemption from Watch and Ward and from bearing and providing Arms be now and hereafter punctually observed in favour of the Members of the said College within the limits aforesaid; And that you suffer them not to be any wise molested on that behalf And for so doing this shall be your Warrant. Given at our Court at *Whitehall* the 28th day of June 1665 in the seventeenth year of our Reign.

By his Majestie's Command
WILLIAM MORICE.

College Questions resolved by the Lord Chancellor and Judges in the fifth of King *James* his Reign An. Dom. 1607

The Kings most Excellent Majesty having directed his Letters to the Right honourable Thomas Lord Ellesmere, Lord Chancellor of England, and to Sir John Popham Knight, Lord Chief Justice of England and one of his Highnesses most honourable Privy Council, They the said Lord Chancellor and Lord Chief Justice by virtue of the same Letters called unto them Sir Thomas Fleminge Knight, then Lord Chief Baron of his Majesty's Court of Exchequer, Sir Thomas Walmesley & Sir Peter Warburton, Knights, two of his Majesty's Justices of the Court of Common Pleas, and Sir David Williams and Sir Laurence Tanfield Knights two of his Majesties Justices of the King's Bench, and after due consideration had both of the Charter of King Henry the eighth made unto the said President and College of Physicians in the tenth year of his Reign, and several Acts of Parliament thereof made, one in the fourteenth year of the same King, and the other in the first year of Queen Mary, for the ordering and governing of the said College and of all the Practisers in *London* and seven miles compass, did on the first of May 1607 at the house of the said Lord Chancellor called *York* House, resolve the several questions hereafter mentioned, as is expressed under every Question

Quest. 1. Whether Graduates of Oxford and Cambridge may practise in *London* or seven miles compass of the same without licence under the said College Seal, by virtue of the clause in the end of the Statute of 14. H. 8. and whether that clause hath not relation to the Statute of 3. H. 8. onely, or how far it doth extend?

Resp. All resolved, that no Graduate that is not admitted and licenced by the President and College of Physicians

under their Common Seal, could practise in London or within 7 miles compass of the same.

Quest. 2. Whether, by Graduates, Graduates in Physick onely are to be undetstood?——

Resp. They resolved That the exception in the Statute of 14. H. 8. cap. 5. of Graduates in the two Universities, is to be understood onely of Graduates of Physick and of no others. And all resolved, That by that exception those Graduates may practise in all other places of *England* out of *London* and 7 miles of the same without examination; But not in *London* nor within the said Circuit of 7 miles.

Quest. 3. If Graduates not admitted to practise in *London* practise there, whether, for evil practice or misdemeanor therein, they be not subject to the Corporation and Government of the College?

Resp. They all agreed, That they are subject to the Government and correction of the College by an express Clause of the said Charter enacted which giveth to the President and College *Supervisionem Scrutinium, Correctionem & Gubernationem* as well of all persons using the practise of Medicine within the City &c.

Quest. 4. If they may not practise without admission of the College (as their Letters Patents plainly import) Then whether such Graduates are not subject to the examination, without which there were never any admitted; and without which the admission cannot be approved; because every Graduate is not absolutely good *ipso facto*?

Resp. It was resolved by all That all that practised or should practise Physick either in *London* or within the compass of seven miles of the same, must submit themselves to the examination of the President and College if they be required thereunto by their authority notwithstanding any licence, allowance or privilege given them in *Oxford* or *Cambridge* either by their degree or otherwise.

Concerning Punishment & Correction against Offenders.

Quest. 1. Whether the President and four Censors together, or the Censors alone may not commit to Prison without bail or mainprize all Offenders in the Practice of Physick according to the Statute of *primo Mariæ* and how long, whether till he have paid such Fine as shall be assessed upon him, or have submitted himself to their Order, and in what manner?——

Resp. They all resolved, That for not well doing using or practising the faculty or Art or Physick or for disobedience or contempts done and committed against any Ordinance made by the College, by virtue and according to the power and authority to them granted, they may commit the Offenders without bail or mainprize, as the words of the Statute are. Which they all resolved, would not be altered or interpreted otherwise than the express words of the Statute are.

Quest. 2. Whether they may not commit to prison for disobedience and contempt of the private Statutes and Ordinances of the College made for the better Government thereof, and for not payment of such reasonable fines as shall be imposed by the President and Censors for maintenance of the said College, among the Members of the same College?

Resp. They all resolved, That the President and College might commit to prison for offences and disobedience done and committed against any lawfull Ordinance made by the said College, and might impose reasonable fines for the breach thereof, and detain the parties committed till these fines were satisfied.

Quest. 3. Whether they may not justly take upon every admission a reasonable sum of money for the better maintenance and defraying of necessary expences, as in other Corporations?

Resp. They all held That they might take such reasonable sums.

Quest. 4. Whether those onely are to be committed that are Offenders in *Non bene exequendo, faciendo & utendo facultate Medicinæ,* as in the Letters Patents; and such as are sufficient and not admitted, are to be sued for 5 li. a month and not be committed?

Resp. They all held That by the Charter and Acts of Parliament they might commit Offenders and Practisers that offended in *non bene exequendo faciendo et utendo facultate:* But for the committing to prison of such as practise (not being admitted by the College) they held it doubtful, for that the Charter and Statute do in that case inflict a punishment of 5 li. a month against such practiser without admittance by the College. But they all resolved, That if the President and College made an Ordinance to prohibit the practising of all without admittance under the common Seal of the said College, That for breach and contempt of this Ordinance, the President and College might both impose a reasonable fine upon the Offender and commit him without bail or mainprize.

Quest. 5. Whether refusal to come to be examined upon warning given be not a sufficient cause of Commitment?

Resp. They all resolved, That if the College do make an Ordinance, That if any Practiser of Physick in *London* or within 7 miles of the same shall obstinately refuse to be examined by the Censors of the College *in non bene exequendo faciendo & utendo* the Art of Physick in his Medicines or Receipts that the said President or Censors may commit him to prison, there to remain without bail or mainprize, untill he be delivered by the President and Censors and to forfeit and pay to the said College some reasonable sum of money, That the same Ordinance will be good and lawfull. And if any after shall offend contrary to the said Ordinance, the President and Censors may lawfully commit such Offender to prison, there to remain with-

out bail or mainprize untill he shall be delivered by the said President and Censors.

It pleased the Lord Chancellor to move these Questions to the Judges as material for the execution of the Statutes.

1 Quest. Whether the party committed for unskilfull or temerarious practice may have an action of false imprisonment against them, and thereby draw in question or issue the goodness or badness of the Physick?

Resp. All resolved, That the Party so committed was concluded by the sentence and judgement of the 4 Censors of the College of Physicians.

2 Quest. Whether if any not admitted do practise Physick within London or 7 miles of the same but once twice or thrice in one month, be an Offender against the Charter and Statutes of the College?

Resp. All resolved it was, if he be a professed Physician.

These I conceive to be the resolutions of their Lordships and the Judges upon the Questions which I humbly refer to themselves to affirm or disaffirm

John Crook
Tho. Foster
Tho. Harries

(from Goodall's Collection, p. 276).

CASES.

Dr. BONHAM'S CASE.

(From 8 Co. Rep. 114.)

Hil. 7 Jac. 1.

Thomas Bonham, doctor in philosophy and physic, brought an action of false imprisonment against Henry Atkins, George Turner, Thomas Moundford, and John Argent, doctors in physic, and John Taylor, and Wm. Bowden yeomen; for that the defendants, the 10 Nov. *anno* 4 *Jacobi*, did imprison him, and detain him in prison seven days. The defendants pleaded the letters patent of King H. 8. bearing date the 23 Septemb. *anno* 10 of his reign, by which he recites, (*a*) *Quod cum Regii officii sui, &c. (quod vide ante p. 7.)* But the case at bar doth principally consist on two clauses in the charter. The first, *concessimus etiam eisdem presidenti, &c. (quod vide ante p. 10.)* The second clause is, which immediately follows in these words, *præterea voluit, &c. (quod vide ante p. 10.)* And afterwards, by act of Parliament made *anno* (*b*) 14 H. 8. it was enacted, that the said corporation, and every grant, article, and other things in the said letters patent

Skinner 568. 4 Inst. 251. 2 Brownl. 255, 256, &c. 1 Ld. Raym. 454.

(*a*) 2 Brownl. 256, 260.

(*b*) 14 & 15 H. 8. cap. 5. 1 Roll. 598. 4 Inst. 251. Rastal Physicians 3. 2 Bulst. 185. Lit. Rep. 168, 169, 172, 212, 215, 246, 247, 248, 249. 1 Jones 261. Cr. Jac. 121, 159, 160. Cr. Car. 256. Palm. 486.

contained and specified, should be approved, granted, ratified, and confirmed, &c. *in tam amplo & largo modo prout poterit acceptari, cogitari, et construi per easdem literas patentes.* And further it was enacted, that the said six persons named in the said letters patent, as principal of the said college, should elect to them two other of the said college, who should be named *electi*, and that the said elects should chose one of them to be president, as by the said act appears: and further, they pleaded the act of (*a*) 1 *Mariæ*, by which it is enacted, *Quod quædam concessio, &c.* And further it was enacted, "That whensoever "the president of the college, or commonalty of the faculty "of physic at London for the time being, or such as the "said president and college shall yearly, according to the "tenor and meaning of the said act, authorize to search, "examine, correct, and punish all offenders and trans-"gressors in the said faculty, &c. shall send or commit any "such offender or offenders for his or their offence or dis-"obedience, contrary to any article or clause contained in "the said grant or act, to any ward, gaol, or prison, &c." (see p. 26.) And further pleaded, that the said Thomas Bonham, 10 April, 1606, within London, against the form of the said letters patent, and the said acts, *exercebat artem medicinæ, non admissus per literas præd' presidentis & collegii sigillo eorum communi sigillat' ubi revera præd' Tho. Bonham fuit minus sufficiens ad artem medicinæ exercend'.* By force of which, the said Thomas Bonham, 30 *Aprilis* 1606, was summoned in London by the censors or governors of the college, *ad comparend' coram præsiden' & censor' sive gubernatorib' collegii præd'* at the college, &c. the 14th day of April next following, *super præmissis examinand'.* At which day the said Tho. Bonham came before the president and censors, and was examined by the censors *de scientiâ suâ in facultate suâ in medicin' admi-*

(*a*) 1 Mar. c. 9. Rastal's Physicians 7. Lit. Rep. 169, 172, 173, 212, 213, 215, 248, 249, 350, 351. 1 Jones 263. Cr. Car. 257. Cr. Jac. 121. 4 Inst. 251. 2 Brownl. 257, 262, 265, 266.

nistrand'. Et quia præd' Thomas Bonham sic examinatus minus apte & insufficienter in præd' arte medicinæ respondebat, & inventus fuit super examinationem præd' per præd' præsident' & censores minus insufficiens & inexpert' ad artem medicinæ administrand' ac pro eo quod præd' Tho. Bonham multoties ante tunc examinatus, & interdictus per præsident' & censores, de causis præd' ad artem medicinæ administrand' per unum mensem et amplius post talem interdictionem facultatem illam in Lond' præd' sine licentia, &c. ideo adtunc & ibid' consideratum fuit per præd' præsident' & censores, quod præd' Thomas Bonham pro inobedientia et contempt' suis præd' amerciarctur to 100*s. in proximis comitiis præd' præsident' et collegii persolvend' et deinceps abstineret, &c. quousque inventus fuerit sufficiens, &c. sub pœna conjiciendi in carcerem si in præmissis delinqueret.* And that the said T. Bonham, 20 Octo. 1606, within London did practice physic, and the same day he was summoned by the censors to appear before the president and them, 22 Octob. then next following, at which day Bonham made default: *ideo consideratum fuit per præd' censores*, that for his disobedience and contempt he should be amerced to 10l. and that he should be arrested and committed to custody; and afterward, 7 Nov. 1606, the said T. Bonham, at their assembly came before the president and censors, and they asked him if he would satisfy the college for his disobedience and contempt, and submit himself to be examined, and obey the censure of the college, who answered, that he had practised and would practise physic within London, *nulla a collegio petita venia*, and that he would not submit himself to the president and censors, and affirmed, that the president and censors, had no authority over those who were doctors in the university; for which cause, the said four censors, *sc.* Dr. Turner, Dr. Mouudford, Dr. Argent, and Dr. Dun, then being censors or governors, *pro offensis et inobedientia præd' adtunc & ib' ordinaverunt & decreverunt, quod præd' T. Bonham in carcerem mandarctur ib' remansur' quousque abinde per præsident' & censores, seu*

gubernatores collegii præd' pro tempore existen' deliberaretur, and there then by their warrant in writing, under their common seal, did commit the plaintiff to the prison of the Compter of London, &c. *absque ballio sive manucapt' ad custagia & onera ipsius T. Bonham, donec præd' T. Bonham per præcept' præsiden' & censor' collegii præd' sive successor' suor' liberatus esset;* and Dr. Atkins then president, and the censors, and Bowden and Taylor as their servants and by the commandment of the said president and censors, did carry the plaintiff with the warrant, to the gaol, &c. which is the same imprisonment. The plaintiff replied and said, that by the said act of 14 H. 8. it was further enacted, "And where that in the dioceses of England, out of London, it is not like to find alway men able "sufficiently to examine (after the statute) such as shall be "admitted to exercise physic in them, that it may be "enacted in this present Parliament, that no person from "henceforth be suffered to exercise or practise physic "through England, until such time that he be examined at "London by the said president and three of the said elects, "and to have from them letters testimonial of their approving and examination, except he be a graduate of "Oxford or Cambridge, which have accomplished all "things for his form without any grace:" and that the plaintiff, *anno Dom.* 1595, was a graduate, *sc.* a doctor in the university of Cambridge, and had accomplished all things concerning his degree for his form without (*a*) grace, by force whereof he had exercised and practised physic within the city of London until the defendants had imprisoned him, &c. upon which the defendant demurred in law. And this case was often argued by the Serjeants at bar in divers several terms; and now this term the case was argued by the Justices, and the effect of their arguments who argued against the plaintiff (which was divided into three parts) shall be first reported. The first was, whether a doctor of physic of the one university or the other, be by

(*a*) 2 Brownl. 201, 202.

the letters patent, and by the body of the act of 14 H. 8. restrained from practising physic within the City of London, &c. The second was, if the exception in the said act of (*a*) 14 H. 8. has excepted him or not. The third was, that his imprisonment was lawful for his said disobedience. And as to the first, they relied upon the letter of the grant, ratified by the said act of 14 H. 8. which is in the negative, *sc. nemo in dictâ civitate, &c. exerceat dictam facultatem nisi ad hoc per prædict' præsidentem & communitatem, &c. admissus sit, &c.* And this proposition is a general negative, but (*b*) *generale dictum est generaliter intelligendum*; and *nemo* excludes all; and therefore a doctor of the one university or the other, is prohibited within this negative word *nemo*. And many cases were put where negative statutes shall be taken *stricte et exclusive*, which I do not think necessary to be recited here. Also they said, that the statute of (*c*) 3 H. 8. c. 11. which in effect is repealed by this act of (*d*) 14 H. 8. has a special proviso for the universities of Cambridge and Oxford, which being here left out, doth declare the intention of the makers of the act, that they did intend to include them within this general prohibition, *nemo in dictâ civitate, &c.* As to the second point they strongly held, that the said latter clause, "and where that in the "dioceses of England, out of London," &c. this clause, according to the words, extends only to places out of London, and so much the rather, because they provided for London before, *nemo in dictâ civitate, &c.* Also the makers of the act put a distinction betwixt those who shall be licensed to practise physic in London, &c. for they ought to have the admittance and allowance of the president and

(*a*) 14 & 15 H. 8. cap. 5.

(*b*) 11 Co. 59. a. Co. Lit. 36. a. 2 Inst. 81. Hard. 305.

(*c*) Rastal. Physician 1.

(*d*) 14 & 15 H. 8. c. 5. 1 Roll. 598. 4 Inst. 251. Rastal Physician 3. 2 Bulstr. 185. Lit. Rep. 168, 169, 172, 212, 215, 246, 247, 248, 249. 1 Jones 261. Cr. Jac. 121, 159, 160. Cr. Car. 256. Palm. 486. Cart. 115. 6 Mod. 125.

college in writing, under their common seal; but he who shall be allowed to practise physic throughout England, out of London, ought to be examined and admitted by the president and three of the elects, and so they said, that it was lately adjudged in the King's Bench, in an information exhibited against the said Dr. Bonham for practising physic in London for divers months. As to the third point they said, that for his contempt and disobedience before them at their assembly in their college, they might well commit him to prison for they have authority by the letters patent and act of Parliament, and therefore for a contempt or misdemeanor before them they may commit him. Also the act of (*a*) 1 M. has given them power to commit them for every offence or disob. contrary to any article or clause contained in the said grant or act. But there is an express negative article in the said grant, and ratif. by the act of 14 H. 8. *Quod nemo in dictâ civitate, &c. exerceat, &c.* and the defendants have pleaded, that the plaintiff had practised physic in London by the space of one month, &c. and therefore the act of 1 *Mariæ* has authorised them to imprison him in this case; wherefore they concluded against the plaintiff. But it was argued by Coke Chief Justice, Warburton and Daniel Justices of the Common Pleas, to the contrary. And Daniel Justice conceived, that a doctor of physic, of the one university or the other, &c. was not within the body of the act, and if he was within the body of the act, that he was excepted by the said latter clause; but Warburton argued against him for both the points; and the Chief Justice did not speak to those two points, because he and Warburton and Daniel agreed, that this action was clearly maintainable for two other points, and therefore in this action the Chief Justice omitted to speak to the said two points; but to two other points, he and the said two other Justices, Warburton and Daniel, did speak, *sc.* 1.

(*a*) 1 Mar. c. 9. Rastal Physician 7. Lit. Rep. 169, 172, 173, 212, 213, 215, 248, 249, 350, 351. 1 Jones 263. Cr. Car. 257. Cro. Jac. 121. 4 Inst. 251. 2 Brownl. 357, 262, 265, 266. Cart. 115.

Whether the censors have power, for the causes alledged in their bar, to fine and imprison the plaintiff. 2. Admitting that they have power to do it, if they had pursued their power. But the Chief Justice, before he argued the points in law, because much was said in commendation of the doctors of physic of the college in London, and somewhat (as he conceived) in derogation of the dignity of the doctors of the universities, he first attributed much to the doctors of the said college in London, and confessed that nothing was spoke in their commendation which was not due to their merits: but yet that no comparison was to be made between that private college, and either of the universities of Cambridge and Oxford, no more than between the father and his children, or between the fountain and the small rivers which descend from it; the university is *alma* (*a*) *mater*, from whose breasts those of that private college have sucked all their science and knowledge (which I acknowledge to be great and profound) but the law saith, *erubescit lex filios castigare parentes:* the university is the fountain, and that and the like private colleges are *tanquam rivuli*, which flow from the mountain, *et melius est petere fontes quam sectari rivulos.* Briefly, *Academiæ* (*b*) *Cantabrigiæ & Oxoniæ sunt Athenæ nostræ nobilissimæ, regni soles, oculi & animæ regni, unde religio, humanitas, et doctrina in omnes regni partes uberrimè diffunduntur:* but it is true, *nunquam sufficiet copia laudatoris, quia nunquam deficiet materia laudis*; and therefore these universities exceed and excel all private colleges, *quantum inter virburna cupressus.* And it was observed that K. H. 8. in his said letters patent and the K. and the Parliam. in the act of 14 H. 8. in making of a law concern. physicians, for the more safety and health of men, therein follow the order of a good physician *(Rex* (*c*) *enim omn' artes censetur habere in scrinio pect' sui)* for, *medicina est duplex, removens,* (*d*) *& promovens*; *removens morbum, & promovens ad salutem:* and therefore five manner

(*a*) 2 Brownl. 264. (*b*) 2 Brownl. 264.
(*c*) 2 Brownl. 264. (*d*) 2 Brownl. 264.

of persons (who more hurt the body of man than the disease itself, one of which said of one of their patients, *fugiens morbum incidit in medicum*) are to be removed; 1. *Improbi.* 2. *Avari, qui medicinam magis* (*a*) *avaritiæ suæ causa quam ullius bonæ conscientiæ fiducia profitentur.* 3. *Malitiosi.* 4. *Temerarii.* 5. *Inscii.* And of the other part five manner of persons were to be promoted, as appears by the said act, *sc.* those who were, 1. profound. 2. sad. 3. discreet. 4. groundly learned. 5. profoundly studied. And it was well ordained, that the professors of physic should be profound, sad, discreet, &c. and not youths, who have no gravity and experience; for as one saith, (*b*) *In juvene theologo conscientiæ detrimentum, in juvene legista bursæ detrimentum, in juvene medico cœmiterii incrementum.* And it ought to be presumed, every doctor of any of the universities to be within the statutes, *sc.* to be profound, sad, discreet, groundly learned, and profoundly studied, for none can there be master of arts (who is a doctor of philosophy) under the study of seven years, and cannot be doctor in physic under seven years more in the study of physic; and that is the reason that the plaintiff is named in the declaration doctor of Philosophy, and doctor of physic; *quia oportet medicum esse philosophum,* (*c*) *ubi enim philosophus desinit, medicus incipit:* as to the two points upon which the Chief Justice, Warburton and Daniel, gave judgment. 1. It was resolved by them, that the said censors had not power to commit the plaintiff for any of the causes mentioned in the bar; and the cause and reason thereof shortly was, that the said clause, which gives power to the said censors to fine and imprison, doth not extend to the said clause, *sc. quod nemo in dictâ civitate,* &c. *exerceat dictam facultatem, &c.* which prohibits every one from practising physic in London, &c. without licence from the president and college; but extends only to punish those who practise physic in London, *pro delictis suis in non bene* (*d*) *exequendo,*

(*a*) 2 Brownl. 258. (*b*) 2 Brownl. 264.
(*c*) 2 Brownl. 263. (*d*) 2 Brownl. 258,

faciendo & utendo facultate medicinæ, by fine and imprisonment: so that the censors have not power by the letters patent, and the act, to fine and imprison any for practising physic in London, but only *pro delictis suis in non bene exequendo*, *&c. sc.* for ill, and not good use and practice of physic. And that was made manifest by five reasons, which were called *vividæ rationes*, because they had their vigour and life from the letters patent, and the act itself; and the best (*a*) expositor of all letters patent, and acts of Parliament, are the letters patent and the acts of Parliament themselves, by construction, and conferring (*b*) all the parts of them together, (*c*) *Optima statuti interpretatrix est (omnibus particulis ejusdem inspectis) ipsum statutum;* and (*d*) *injustum est nisi tota lege inspecta una aliqua ejus particula proposita judicare vel respondere.* The first reason was, that these two were two absolute, perfect, and distinct clauses, and as parallels, and therefore the one did not extend to the other; for the second begins, *præterea voluit et concessit*, *&c.* and the branch concerning fine and imprisonment is parcel of the 2d clause. 2. The first clause prohibiting the practice of physic, &c. comprehends four certainties: 1. Certainty of the thing prohibited, *sc.* practice of physic. 2. Certainty of the time, *sc.* practice for one month. 3. Certainty of penalty, *sc.* 5l. 4. Certainty in distribution, *sc.* one moiety to the King, and the other moiety to the college, and this penalty he who practises physic in London incurs, although he practises and uses physic well, and profitable for the body of man; and on this branch the information was exhibited in the King's Bench. But the clause to punish *delicta in non bene exequendo*, &c. on which branch the case at bar stands, is altogether uncertain, for the hurt which may come thereby may be little or great, *leve vel grave*, excessive or small, &c. and therefore

(*a*) Gobd. 418. 2 Roll. Rep. 356. Wing. Max. 239.
(*b*) 2 Co. 55. a. 3 Co. 59. b. Gobd. 324. Co. Lit. 381. 5 Co. 99. a.
(*c*) Wing. Max. 239.
(*d*) Wing. Max. 239.

the King and the makers of the act could not, for an offence so uncertain, impose a certainty of the fine, or time of imprisonment, but leave it to the censors to punish such offences, *secundum quantitatem delicti*, which is included in these words, *per fines, amerciamenta, imprisonamenta corporum suorum, et per alias vias rationibiles et congruas.* 2. The harm which accrues by *non bene exequendo, &c.* concerns the body of man; and therefore it is reasonable that the offender should be punished in his body, *sc.* by imprisonment; but he who practises physic in London in a good manner, although he doth it without licence, yet it is not any prejudice to the body of man. 3. He who practises physic in Lon. doth not offend the statute by his practice, unless he practises it by the space of a month. But the clause of *non bene exequendo, &c.* doth not prescribe any certain time, but at what time soever he ministers physic *non bene, &c.* he shall be punished by the said second branch: and the law hath great reason in making this distinction, for divers nobles, (*a*) gentlemen, and others, come upon divers occasions to London, and when they are here they become subject to diseases, and thereupon they send for their physicians in the country, who know their bodies, and the cause of their diseases; now it was never the meaning of the act to bar any one of his own physician; and when he is here he may practise and minister to another by two or (*b*) three weeks, &c. without any forfeiture; for any one who practises physic *bene, &c.* in London (although he has not taken any degree in any of the universities) shall forfeit nothing, unless he practises it by the space of a month; and that was the reason that the time of a month was put in the act. 4. The censors cannot be (*c*) judges, ministers, and parties; judges to give sentence or judgment; ministers to make summons; and parties to have the moiety

(*a*) 2 Brownl. 264. Cart. 115.

(*b*) 2 Brownl. 264.

(*c*) Co. Lit. 141. a. Hob. 87. Bridg. 11. 2 Brownl. 266. Dyer 220. pl. 14.

of the forfeiture, *quia* (*a*) *aliquis non debet esse Judex in propriâ causâ, imo iniquum est aliquem suæ rei esse judicem*; and one cannot be judge and attorney for any of the parties, Dyer 3 E. 6. 65. 38 E. 3. 15. 8 H. 6. 19. b. 20. a. 21 E. 4. 47. a. &c. And it appears in our books, that in many cases, the common law will (*b*) controul acts of Parliament, and sometimes adjudge them to be utterly void: for when an act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will controul it, and adjudge such act to be void: and therefore in 8 E. 3. 30. a. b. Thomas Tregor's case on the statute of W. 2. c. 38. & *artic' super chartas*, c. 9. Herle (*c*) saith, some statutes are made against law and right, which those who made them perceiving, would not put them in execution: the stat. of W. 2. (*d*) c. 21 gives a writ of *Cessavit hæredi petenti super hæredem tenent' & super eos quibus alienatum fuerit hujusmodi tenementum:* and yet it is adjudged in 33 E. 3. (*e*) *Cessavit* 42. where the case was, two coparceners lords, and tenant by fealty and certain rent, one coparcener had issue and died, the aunt and the niece shall not join in a *Cessavit*, because the heir (*f*) shall not have a *Cessavit* for the cesser in the time of his ancestor, F. N. B. 209. F. and therewith agrees Plow. Com. 110. a. and the reason is, because in a *Cessavit* the tenant before judgment may render the arrearages and damages, &c. and retain his land, and that he cannot do when the heir brings a *Cessavit* for the cesser in the time of his ancestor, for the arrearages incurred in the life of the ancestor do not belong to the heir: and because it would be against common right and reason, the common law adjudges the said act of Parliament

(*a*) Co. Lit. 141. a.

(*b*) 7 Co. 14. a. Calvin's case. Hob. 87. 2 Brownl. 198, 265. Hard. 140.

(*c*) 8 E. 3. 30. b.

(*d*) 2 Inst. 401, 402.

(*e*) 2 Brownl. 265. 2 Inst. 402. F. N. B. 209. f.

(*f*) 2 Brownl. 265. Vet. N. B. 138. b. 2 Inst. 442.

as to that point void. The statute of (*a*) Carlisle, made *anno* 35 E. 1. enacts, that the order of the Cistercians and Augustines, who have a convent and common seal, that the common seal shall be in the keeping of the Prior, who is under the Abbot, and four others of the most grave of the house, and that any deed sealed with the common seal, which is not so in keeping shall be void: and the opinion of the court (*in an.* 27 H. 6. Annuity 41.) was, that this statute was (*b*) void, for it is impertinent to be observed, for the seal being in their keeping, the Abbot cannot seal any thing with it, and when it is in the Abbot's hands, it is out of their keeping *ipso facto*; and if the statute should be (*c*) observed, every common seal shall be defeated upon a simple surmise, which cannot be tried. Note reader the words of the said statute at Carlisle, *anno* 35 E. 1. (which is called *Statutum religiosorum*) are, *Et insuper ordinavit dominus Rex & statuit, quod Abbates Cisterc' & Prœmonstraten' ordin' religiosorum, &c. de cœtero habeant sigillum commune, et illud in custodia Prioris monasterii seu domus, et quatuor de dignioribus et discretioribus ejusdem loci conventus sub privato sigillo Abbatis ipsius loci custod' depo, &c. Et si forsan aliqua scripta obligationum, donationum, emptionum, venditionum, alienationum, seu aliorum quorumcunque, contractuum alio sigillo quam tali sigillo communi sicut prœmittit' custodit' inveniant' a modo sigillat', pro nullo penitus habeantur omnique careant firmitate.* So the statute of 1 E. 6. c. 14. gives chauntries, &c. to the King, saving to the donor, &c. all such rents, services, &c. and the common law controuls it, and adjudges it void as to services, and the donor shall have the rent, as a rentseck, distrainable of common right, for it would be against common right and reason that the (*d*) King should hold of any, or do service to any of his subjects, 14 Eliz. Dyer 313. and

(*a*) 2 Inst. 580, 581, 582, &c. Skinner 464.

(*b*) 2 Inst. 588. 2 Brownl. 198, 265.

(*c*) 2 Brownl. 265. 2 Inst. 587.

(*d*) Dy. 313. pl. 91. 1 Co. 47. a. Dav. 2. a. Co. Lit. 1. b. Cro. Car. 82, 83. 2 Roll. Rep. 246, 247. 1 Jones 234. Lit. Rep. 43.

so it was adjudged Mich. 16 & 17 Eliz. in *Com' Banco* in (*a*) Strowd's case. So if any act of Parliament gives to any to hold, or to have conusans of all manner of pleas arising before him within his manor of D. yet he shall hold no plea, to which he himself is party; for, as hath been said, *iniquum est aliquem suæ rei esse judicem.* 5. If he should forfeit 5l. for one moiety by the first clause, and should be punished for practising at any time by the second clause, two absurdities should follow, 1. That one should be punished not only twice but many times for one and the same offence. And the divine saith, *Quod* (*b*) *Deus non agit bis in idipsum;* and the law saith, *Nemo debet bis puniri pro uno delicto.* 2. It would be absurd, by the first clause, to punish practising for a month, and not for a lesser time, and by the second to punish practising not only for a day, but at any time, so he shall be punished by the first branch for one month by the forfeit of 5l. and by the second by fine and imprisonment, without limitation for every time of the month in which he practises physic. And all these reasons were proved by two grounds, or maxims in law; 1. (*d*) *Generalis clausula non porrigitur ad ea quæ specialiter sunt comprehensa:* and the case between Carter and (*e*) Ringstead, Hil. 34 Eliz. Rot. 120. *in Communi Banco*, was cited to this purpose, where the case in effect was, that A. seized of the manor of Staple in Odiham in the county of Southampton in fee, and also of other lands in Odiham aforesaid in fee, suffered a common recovery of all and declared the use by indenture, that the recoverer should stand seised of all the lands and tenements in

(*a*) 1 And. 45. 3 Leon. 58. 4 Leon, 40, 41.

(*b*) 4 Co. 43. a.

(*c*) 2 Ventr. 170. 4 Co. 43. a. 5 Co. 61. a. 11 Co. 59. b. 1 Roll. Rep. 95. Cawly 78. Noy 82. Bridgm. 122. Cro. Jac. 481. Wing. Max. 695.

(*d*) Postea 154. b. Raymond 330. Hawkes's Max. 21. Styles 391.

(*e*) Cro. El. 208. 2 Leon. 47. Owen 84, 85. 1 And. 245. 6 Co. 64. b. 3 Bulstr. 66, 185. 2 Roll. Rep. 276. Winch. 92. Lane 69. Lit. Rep. 64, 67, 289. Styles 391.

Odiham, to the use of A. and his wife, and to the heirs of his body begotten; and further, that the recoverer should stand seised to the use of him, and to the heirs of his body, and died, and the wife survived, and entered into the said manor by force of the said general words; but it was adjudged, that they did not extend to the said manor which was specially named: and if it be so in a deed, *a fortiori*, it shall be so in an act of Parliament, which (as a will) is to be expounded according to the intention of the makers. 2. (*a*) *Verba posteriora propter certitudinem addita ad priora quæ certitudine indigent sunt referenda.* 6 E. (*b*) 3. 12. a. b. Sir Adam de Clydrow Knight, brought a *Præcipe quod reddat* against John de Clydrow, and the writ was, *Quod juste, &c. reddat manerium de Wicomb et duas carucatas terræ cum pertinentiis in Clydrow*, in that case the town of Clydrow shall not relate to the manor, *quia non indiget*, for a manor may be demanded without mentioning that it lies in any town, but *cum pertinentiis*, although it comes after the town, shall relate to the manor, *quia indiget. Vide* 3 E. 4. 10. the like case. But it was objected, that where by the second clause it was granted, that the censors should have *supervisum et scrutinium, correctionem et gubernationem omnium et singulorum medicorum, &c.* they had power to fine and imprison. To that it was answered, 1. That *that* is but part of the sentence, for by the entire sentence it appears in what manner they shall have power to punish, for the words are, *ac punitionem eorum pro delictis suis in non bene exequendo, faciendo, vel utendo illa facultate*; so that without question all their power to correct and punish the physicians by this clause is only limited to these three cases, *sc. in non bene exequendo, faciendo, vel utendo, &c.* Also this word *punitionem*, is limited and restrained by these words, *ita quod punitio eorundem medicorum, &c. sic in præmissis delinquentium, &c.* which words, *sic in præmissis delinquentium*, limit the former words in the first

(*a*) Wing. Max. 67. Lit. Rep. 66.
(*b*) Lit. Rep. 66. Wing. Max. 67. Styles 78.

part of this sentence, *ac punitionem eorum pro delictis suis in non bene exequendo, &c.* 2. It would be absurd, that in one and the same sentence the makers of the act should give them a general power to punish without limitation; and a special manner how they shall punish, in one and the same sentence. 3dly, Hil. 38 Eliz. in a *Quo warranto* against the Mayor and Commonalty of London, it was held, that where a grant is made to the Mayor and Commonalty, that the Mayor for the time being should have (*a*) *plenum et integrum scrutinium, gubernationem, et correctionem omnium et singulorum mysteriorum, &c.* without granting them any court, in which should be legal proceedings, that it is good for search, whereby a discovery may be made of offences and defects, which may be punished by the law in any court, but it doth not give, nor can give them any irregular or absolute power to correct or punish any of the subjects of the kingdom at their pleasure. 2. It was objected, that it is incident to every court created by letters patent, or act of Parliament, and other courts of record, to punish any misdemeanor done in court, in disturbance or contempt of the court, by imprisonment. To which it was answered, that neither the letters patent nor the act of Parliament has granted them any court, but only an (*b*) authority, which they ought to pursue, as it shall be afterwards said. 2. If any court had been granted them, they could not by any incident authority *implicitè* granted them, for any misdemeanor done in court, commit him to prison without bail or mainprize, until he should be by the commandment of the president and censors, or their successors, delivered, as the censors have done in this case. 3. There was not any such misdemeanor for which any court might imprison him, for he only shewed his case to them, which, he was advised by his counsel, he might justify, which is not any offence worthy of imprisonment. The second point was, admitting that the censors had power by the act, if they had pursued their authority, or not? And it was

(*a*) Cart. 120, 121. (*b*) Postea 121. a.

resolved by the Chief Justice, Warburton and Daniel, that they had not pursued it for six reasons. 1. By the act, the censors only have power to impose a fine, or amerciament; and the president and censors imposed the amerciament of 5l. upon the plaintiff. 2. The plaintiff was summoned to appear *coram presidente et censoribus, &c. et non comparuit*, and therefore he was fined 10l. whereas the president had no authority in that case. 3. The fines or amerciaments to be imposed by them, by force of the act, do not belong to them, but to the King, for the King had not granted the fines or amerciaments to them, and yet the fine is appointed to be paid to them, *in proximis comitiis*, and they have imprisoned the plaintiff for non-payment thereof. 4. They ought to have committed the plaintiff presently, by construction of law, although that no time be limited in the act, as in the statute of W. 2. cap. 11 (*a*) *De servientibus, ballivis, &c. qui ad compotum reddend' tenentur, &c. cum dom' hujusmodi servientium dederit eis auditores compoti, et contingat ipsos in arrearagiis super compotum suum omnibus allocatis et allocandis, arrestentur corpora eorum, et per testimonium auditorum ejusdem compoti mittantur et liberentur proximæ gaolæ domini Regis in partibus illis, etc.* In that case, although no time be limited when the accomptant shall be imprisoned, yet it ought to be done (*b*) presently, as it is held in 27 H. 6. 8. a. and the reason thereof is given in Fogassa's case, Plowd. Com. 17. b. that the generality of the time shall be restrained to the present time, for the benefit of him upon whom the pain shall be inflicted, and therewith agrees Plow. Com. 206. b. in Stradling's case. And a Justice (*c*) of Peace upon view of the force, ought to commit the offender presently.

(*a*) 2 Inst. 379, 380. W. 2. c. 11. Plowd. 17. b. Rast. Account 2.

(*b*) Postea 120. b. 2 Brownl. 266. 2 Inst. 380. 2 Bulstr. 139. Fitz. Barr. 44. Br. Account 6. Br. Det. 16. Br. Execution 135. Br. Faux Imprisonment 32.

(*c*) 2 Brownl. 266. 15 R. 2. c. 2. 8 H. 6. c. 9. 6 Mod. 125.

5. Forasmuch as the censors had their authority by the letters patent and act of Parliament, which are high matters of record, their proceedings ought not to be by parol, *& eo potius*, because they claim authority to fine and imprison, and therefore, if judgment be given against one in the Common Pleas in a writ of (*a*) reception, he shall be fined and imprisoned, but if the writ be vicontiel in the county, there he shall not be fined nor imprisoned, because a writ of the court is not of record, F. N. B. in Reception; so in F. N. B. 47. a. a plea of trespass *vi et armis* doth not lie in the county court, hundred court, &c. for they cannot make a record of fine and imprisonment; and regularly they who cannot make (*b*) a record, cannot fine and imprison. And therewith agrees 27 H. 6. 8. Book of Entries, tit. Account, fol. —. The auditors make a record when they commit the defendant to prison; a Justice of Peace upon view of the force may commit, but he ought to make a record of it. 6. Forasmuch as the act of 14 H. 8. has given power to imprison till he shall be delivered by the president and the censors, or their successors, reason requires that it should be taken strictly, for the liberty of the subject (as they pretend) is at their pleasure: and this is well proved by a judgment in Parliament in this very case; for when this act of 14 H. 8. had given the censors power to imprison, yet it was taken so literally, that the gaoler was not bound to receive such as they should commit to him, and the reason thereof was, because they had authority to do it without any court: and thereupon the statute of 1 Ma. (*c*) cap 9. was made, that the gaoler should receive them upon a penalty, and yet none can commit any to prison, unless the gaoler receives him: but the first act, for the cause

(*a*) Antes 60. b. 41. a. 8 Co. 41. 11 Co. 43. b. F. N. B. 73. d.

(*b*) Antes fo. 38. b. 41. a. 60. b. F. N. B. 73. d. 10 Co. 103. a. Rep. Q. A. 146.

(*c*) 2 Brownl. 257, 262, 265, 266. Rast Phys. 7. Lit. Rep. 169, 172, 173, 212, 213, 248, 249, 350, 331. Cr. Jac. 121. Cr. Car. 257. 1 Jones 263. Car. 115. 4 Inst. 251.

aforesaid, was taken so literally, that no necessary incident was implied. And where it was objected, that this very act of 1 M*ar*. cap. 9. has enlarged the power of the censors, and they urged it upon the words of the act; it was clearly resolved, that the said act of 1. *Mar*. did not enlarge the power of the censors to fine or imprison any person for any cause for which he ought not to be fined and imprisoned by the said act of (*a*) 14. H. 8. For the words of the act of Queen Mary are, "according to the tenor and meaning of "the said act:" also "shall send or commit any offender "or offenders for his or their offence or disobedience, con- "trary to any article or clause contained in the said grant "or act, to any ward, gaol, &c." But in this case Bonham has not done any thing which appears within this record, contrary to any article or clause contained within the grant or act of 14 H. 8. Also the gaoler who refuses shall forfeit the double value of the fines and amerciaments that any offender or disobedient shall be assessed to pay; which proves that none shall be received by any gaoler by force of the act of 14 H. 8. but he who may be lawfully fined or amerced by the act of 14 H. 8. and that was not Bonham, as by the reasons and causes aforesaid appears. And admitting that the replication be not material, and the defendants have demurred upon it; yet forasmuch as the defendants have confessed in the bar, that they have imprisoned the plaintiff without cause, the plaintiff shall have judgment: and the difference is, when the plaintiff (*b*) replies, and by his replication it appears that he has no cause of action, there he shall never have judgment: but when the (*c*) bar

(*a*) 14 & 15 H. 8. cap. 5. Roll. 598, 4 Inst. 251. Rast. Phys. 3. 2 Bulstr. 185. Lit. Rep. 168, 169, 172, 212, 215, 246, 247, 248, 249. 1 Jones 261. Cro. Jac. 121, 159, 160. Cro. Car. 256. Palm. 486. Cart. 115. 8 Co. 133. b. 1 Lev. 195.

(*b*) Cro. Jac. 133. Doct. pl. 70, 325. Lit. Rep. 172. Moor 464. 1 Sid. 336. Dyer 39. pl. 62. Fitzgib. 250.

(*c*) Cr. Jac. 133. Cr. Car. 5. Mo. 464. Postea 133. b. 9 Co. 110. b. Doct. pl. 70, 325. Palm. 287. Lit. Rep. 172, 252. 2 Bulstr. 94. Antes 93. a. 1 Sid. 336.

is sufficient in matter, or amounts (as the case is) to a confession of the point of the action, and the plaintiff replies, and shews the truth of the matter to enforce his case, and in judgment of law it is not material, yet the plaintiff shall have judgment, for it is true that sometimes the declaration shall be made good by the bar, and sometimes the bar by the replication, and sometimes the replication by the rejoinder, &c. but the difference is, when the declaration wants time, place, or other (*a*) circumstance, it may be made good by the bar, so of the bar, replication, &c. as appears in 18 E. 4. 16. b. But when the declaration wants substance, no bar can make it good; so of the bar, replication, &c. and therewith agrees 6. E. 4. 2. a good case, and *nota* there *dictum* Coke. *Vide* 18 E. 3. 34. b. 44 E. 3. 7. a. 12 E. 4. 6. 6 H. 7. 10. 7 H. 7. 3. 11 H. 4. 24. &c. But when the plaintiff makes replication, sur-rejoinder, &c. and thereby it appears, that upon the ‡ whole record the pl. has no cause of action, he shall never have judgment, although the bar or rejoinder, &c. be insufficient in matter; for the court ought to judge upon the whole record, and every one shall be intended to make the best of his own case. *Vide* (*b*) Ridgeway's case, in the Third Part of my Reports 52. b. and so these differences were resolved and adjudged between † Kendal and Helyer, Mich. 25 & 26 Eliz. in the K.'s Bench, and Mich. 29 & 30 Eliz. in the same court, between (*c*) Gallys and Burbry. And Coke Ch. Just. in the conclusion of his argument observed seven things for the better direction of the president and commonalty of the said college for the future. 1. That none can be punished for practising physic in London, but by forfeiture of 5l. by the month, which is to be recovered by the law. 2. If any practise physic there

(*a*) 7 Co. 25. a. Dyer 15. pl. 78. Cr. Car. 209. Co. Lit. 303. b. 6 Mod. 119.

‡ Hob. 199. Hard. 38.

(*b*) Styles 354.

† 3 Co. 52. b.

(*c*) 3 Co. 52. b. Cro. El. 62. 1 Leon. 242.

for a less time than a month, that he shall forfeit nothing. 3. If any person prohibited by the statute offends *in non bene exeq' &c.* they may punish him according to the stat. within the month. 4. Those who they may commit to prison by the stat. ought to be commit. (*a*) presently. 5. The fines which they set, according to the statute, belong to the King. 6. They cannot impose a fine, or imprisonment without a record of it. 7. The cause for which they impose fine and imprisonment ought to be certain, for it is (*b*) traversable: for although they have letters patent, and an act of Parliament, yet because the party grieved has no other remedy, neither by writ of error, or otherwise, and they are not made Judges, nor a court given them, but have an (*c*) authority only to do it, the cause of their commitment is traversable in an action of false imprisonment brought against them; as upon the statute of (*d*) bankrupts, their warrant is under the great seal, and by act of Parliament; yet because the party grieved has no other remedy, if the commissioners do not pursue the act and their commission, he shall traverse, that he was not a bankrupt, although the commissioners affirm him to be one; as this term it was resolved in this court, in trespass between Cutt (*e*) and Delabarre, where the issue was, whether Will. Cheyney was a bankrupt or not, who was found by the commissioners to be a bankrupt; *a fortiori* in the case at bar, the cause of the imprisonment is traversable; for otherwise the party grieved may be perpetually, without just cause, imprisoned by them; but the record of a force made by a Justice of Peace is not traversable,

(*a*) Antea 119. b. 2 Brownl. 266. 2 Inst. 380. Bar. 44. Br Account 6. Br. Det. 16. Br. Exec. 135. Br. Faux Imprisonment 32. 2 Bulstr. 139. 6 Mod. 125.

(*b*) 2 Brownl. 266. Hardr. 482.

(*c*) Antea 119. b.

(*d*) 13 El. cap. 7. 1 Jac. cap. 15.

(*e*) 4 Inst. 277 & 278.

because he doth it as Judge, by the statutes of (*a*) 15 R. 2. and 8 H. 6. and so there is a difference when one makes a record as a Judge, and when he doth a thing by special authority, (as they did in the case at bar) and not as a Judge. And afterwards, for the said two last points, judgment was given for the plaintiff, *nullo contradicente*, as to them. And I acquainted Sir Thomas Fleming, Chief Justice of the King's Bench, with this judgment, and with the reasons and causes of it, and he well approved of the judgment which we had given: and this is the first judgment on the said branch concerning fine and imprisonment which has been given since the making of the said charter and acts of Parliament, and therefore I thought it worthy to be reported and published.

(See Carthew 492. 6 Mod. 125.)

[*For the Pleadings in this Case see* 8 *Co. Rep. p.* 107.]

Dr. Groenvelt vers. Dr. Burwell and others, Censors of the College of Physicians

(from 1 Comyns Rep. p. 75)

This was an action of trespass for an assault, battery, wounding and false imprisonment. The defendants as to the beating and wounding, plead not guilty, and as to the residue of the trespass they justify; for that by letters patent dated the 23 of September 10 H. 8 the king granted, that they, viz. the doctors of physick in London, should be a body and perpetual community, *per nomen præsidentis & collegii five communitat' facultat' medicin' London'*, &c. and that they might make By-Laws; *& quod quatour sin-*

(*a*) 15 R. 2. c. 2. 8 H. 6. c. 9.

gulis annis eligerentur qui haberent scrutinium correctionem & gubernationem omnium & singulorum dictæ civitatis medicorum & aliorum medicorum forinsecorum facultate illa utentium infra eandem civitatem & suburbia, ac infra septem milliaria in circuitu ejusdem, ac punitionem eorundem pro delictis suis in non bene exercendo, &c. per fines amerciamenta & imprisonamentum corporum suorum; and that these letters patent were confirmed by an act of parliament of 14 H. 8. And that on the 1st of January 8 W. 3. the plaintiff exercised the art of physick in London, and that he administered bad and unwholesome physick to one woman and that the said woman and her husband complained to the defendants, being the censors of the said college; upon which complaint the plaintiff was summoned before them, and upon examination they found him guilty of administering unwholesome physick, by means of which the said woman languished; and thereupon they fined the plaintiff 20l. and made a warrant under their hands and seals to ———— who was also a defendant, to take the plaintiff; who took him pursuant to such warrant and conveyed him to prison; which is the residue of the trespass of which the plaintiff complains. The plaintiff replies *protestando*, that there are no such letters patent, and no such act of parliament; and *protestando*, that the plaintiff did not administer such unwholesome physick; that the defendants of their own wrong committed the trespass; *absque hoc quod*, that the plaintiff was taken and committed by force of the said warrant: and to this it was demurred. And this case was divers times argued, and many exceptions were taken to the plea and to the replication; and now this term judgment was given for the defendants. And Holt C. J. delivered the opinion of the court; and said, that the rest of the Judges were agreed, that the replication of the plaintiff was ill, and that the plea of the defendants was good. The plaintiff in his replication traverses the taking by the warrant mentioned in the plea of the defendants; and this is ill both in substance and in form; for in point of form he ought not to

traverse the taking by force of the warrant, but that there was not any such warrant; for if it were necessary that the arrest of the plaintiff should be by the same warrant that was mentioned before in the pleading that if the defendants had shewn in their plea another warrant than that which was shewn at the time of the arrest, the plaintiff ought not to have said, that he was not taken by this warrant but that there was not any such warrant. But the replication is not good in point of substance; for the plaintiff seems to intend, that the warrant by which he was arrested was unlawful, yet the plaintiff shall not have advantage of it, if there was another warrant which was lawful to take him at the same time; for if there are two warrants, the one lawful and the other *un*lawful, and the party is taken upon the illegal warrant, yet he who apprehends him may justify himself by the authority of the legal warrant; and this appears by the case Mich 34 Ed. 1 Fitz. Avowry, 232 cited 3 Co. 26. a. If a man takes a distress for a thing for which he has not good cause of distress, but had good cause of distress for another thing; if a replevin is brought, and he comes into court, he may avow for which thing he pleases. Then it was considered whether the plea of the defendants was good; to which it had been objected that it was ill for the uncertainty; for the cause of the commitment being traversable ought to be alleged with certainty. Secondly, That by the plea it appears, that the plaintiff was fined and imprisoned also; the censors (of the college of Physicians the defendants) have authority to impose a fine, and to imprison for non-payment of that fine, or they may imprison for the offence; but they cannot both fine and imprison for the same offence, as in this case; for it does not appear that the imprisonment was for non-payment of the fine but the plaintiff was both fined and imprisoned, and so was twice punished for one offence. Thirdly, the plea does not shew that the plaintiff was one of the college. Fourthly, The plea makes no answer to the assault; it does not shew that there was any assault, or set forth any justification of it.

But Holt C. J. said that the Court held the plea to be good, for it goes to the whole declaration; as to the battery and wounding the defendants plead not guilty, as to the residue of the trespass they justify; and the residue of the trespass comprehends the assault, and every other part of the declaration to which the plea (of not guilty) does not extend: and there is no need that the plaintiff should be of the college; for it appears that he exercised his faculty within London and the censors have jurisdiction within London and the suburbs, and seven miles in circumference; and it appears by the words of the Charter, that the censors have power to punish by fine and imprisonment; and how they exercise that authority we do not enquire, as it will be apparent afterwards in the answer to the first objection, and which is the most material one. In answer to the first objection, then, we say, First that the cause of the commitment is not traversable. Secondly if it were traversable, it is set forth with certainty enough. That the cause of commitment is not traversable appears by the authority which the censors have by the act of parliament; for by it they are constituted judges of fact, what is a mal-administration (of medicines) and what is not: and they are judges of record for they have authority to impose fine and imprisonment; and when a new authority is constituted, with power to fine and imprison, the persons invested with such authority are judges of record; for that every thing proves a court to be a court of record, viz. the power of fining and imprisoning; for courts which are not of record can neither set a fine nor commit any one to prison. 8 Co. 38. b. And there it is proved, that the leet can impose a fine, because it is a court of record; and forasmuch as the statute W. 2. c. 11 impowers the auditors to commit the accountant to prison the auditors are thereby made judges of record; as is observed 10 Co. 103. a. 2. Inst. 218. Then the censors being constituted judges of the matter, that which they have done as such they shall not be answerable for; and that a judge shall not be answerable for an act done by him as a judge, ap-

pears by 12 Co. 24. and the cases there cited. True it is, that if a justice of (*a*) peace issue his warrant to imprison the party, or to arrest him until such time as he can be brought before him, or if the commissioners of bankrupts commit a witness for refusing to be examined (*a*) it may be determined in an action, whether they have pursued their authority or not; for their act in this respect is only ministerial; (*b*) and the commitment is not intended as a punishment, but only as a mesne process to bring the party to justice, or to make him do his duty. My Lord Coke, it is true, says in Dr. Bonham's case, 8 Co. 121 a. that the cause of commitment was traversable; but this opinion was there given obiter, and was not essential to the case in judgment; for there the question was, for practising without the licence of the college, for which the party could not be imprisoned; and Dr. Bonham being a graduate in the university, my Lord Coke was carried away by his affection to his Alma Mater so far as to make a resolution in the present point, which was not in the case before him: but my Lord Coke says, that upon a conviction by the censors, they ought to make a record of it, which admits they are judges of record; and then by his own rule there in the case of a justice of peace who made a conviction of a force, and the cases in his other works, their acts (the acts of the justices of the peace) cannot be traversed; and my Lord Coke does not cite any authority in support of his opinion (as to the point now before us) The reason which he gives why the party has no remedy by writ of error or otherwise is of no weight: I grant that a writ of error lies not; for the censors having a new authority by a special act of parliament and their proceedings being directed to be in a summary way there is no need for them to pursue the forms and methods of others courts; and it is sufficient for them to make such summary proceeding as justices of the peace in many cases may do; yet the party is not without remedy for he may have a Certiorari to remove the record of conviction, and then it may be examined and reviewed, to see whether it be

pursuant to their authority; for in every case where a new jurisdiction is set up for a special purpose this court by virtue of its original power may award a Mandamus to make them put their authority in execution, and a Certiorari to look into their proceeding whether it be conformable to their authority or not. Thus a Certiorari lies to remove an indictment for felony before the justices of the peace (bro. Eliz. 489. Long's case) to remove orders before commissioners of sewers, or by justices of the peace who have authority to make conviction of a force in their presence, or for deer-stealing, but although no Certiorari did lie (in the present case) it is not consequential that the cause of their commitment is traversable; for if the parliament intrusts them with a power so great that no act of theirs shall be reversed or reviewed, there is the less reason that their proceeding should be examined or traversed in an action; a jury is not finable for giving a verdict against evidence; and though there are many cases where jurymen have been fined (1) yet Bushel's case, in which all the others are cited, is sufficient to controul all the rest. Vaug. 135 (a) and if a juror shall not be fined or imprisoned or otherwise punished for refusing to find a man guilty upon apparent and plain evidence, much less shall a judge be liable to censure. In the case (b) of Hammond and Powell, P. 29 Car. 2 an action for false-imprisonment was brought after the resolution in Bushel's case for his imprisonment (for Hammond was one of the same jury with Bushel and fined 40l. and imprisoned for it at the same time,) and notwithstanding that the fine and imprisonment were illegal yet it was adjudged that the action did not lie for false-imprisonment against the judge or the officer; so a fine imposed by a judge of a court is not traversable as an amercement is. 7 H. 6. 13. a. As to the case between Terry and Huntington Hard. 480 which may be objected; that is good law; for there an action was brought against the commissioners of excise, who had charged a man for the duty upon strong waters, where the liquor made by him was low wine of the

first extraction, and the action well lay, for they had exceeded their jurisdiction; for low wines of the first extraction were not chargeable within the act of parliament; and if they had charged a duty upon a liquor not chargeable with it, they were not to be excused for having named it strong waters. If a justice of the peace commits a man for being the Father of a bastard child no action lies against the justice if the man was the father of a bastard otherwise if he had no bastard at all. So the case between Nickols and Walker, Cro. Car. 394, (*a*) is good law, for there an inhabitant of Tottridge was charged to the poor of Hatfield; and the justices of the peace have power to award a distress, where a person is assessed to the poor of the parish where he hath land or is an inhabitant; but where he is charged to the relief of another parish there the case is beyond their jurisdiction. But if the cause of the commitment were traversable yet the plea of the defendants here is good, for it shews with certainty in what the ill-administration of the physic consisted viz in the use of unwholesome drugs: and although it is not said what drugs he used, it is no matter, for how shall we be informed whether he has shewn them. In an action against a surgeon for an inartificial cure the plaintiff does not shew what plaisters the defendant used. As to what hath been said that the plea does not shew for what malady the medicines were given; it was answered that it would be so much the worse if the medicines were given when the party had not any malady at all. And although it is not said that the witnesses upon whose testimony the fine was imposed were upon oath, yet the plea is sufficient; for it may be that it was not necessary that they should be sworn or if it were needful the omission of it is not such as will make their proceedings void. In such a special jurisdiction in which the proceeding is to be in a summary manner it is not needful to observe all the circumstances which are necessary in other legal proceedings.—Judgment for the defendants.

The College of Physicians versus Dr. West.

(from 10 Mod. 358.)

The Question was, whether a Man, that had taken his Degree of Doctor of Physick, in either of the Universities, might not practise in London, and within seven miles of the same, without a Licence from the College of Physicians.

The Court clear of Opinion, that a Licence from the College was necessary; and that by reason of the Charter of Incorporation, confirmed by 14 & 15 Hen. 8. cap. 5. penn'd in very strong and negative words.

As to the Testimonials granted by the Universities upon a Person's taking the Doctors Degree; the Court was of Opinion, That these Testimonials might have the Nature of a Recommendation; they might give a Man a fair Reputation, but conferr'd no Right; and consequently all those Statutes, which have confirmed the Privileges of the Universities, could revive or confirm nothing but the Reputation, that this Testimonial might give such Graduates.

And whereas it has been insisted, That by the last Clause of the Statute, it is said, That none shall practise in the Country without a licence from the President and three Elects, unless he be a Graduate of one of the Universities, it was said all the inference from that would be, That possibly two Licences may be necessary where a person is not a Graduate.

In the Case of Dr. Levet, Lord Chief Justice Holt did not think this a Question worth being found specially.

The College of Physicians are without doubt more competent Judges of the Qualifications of a Physician than the Universities, and there may be many good Reasons for taking a particular care of those, that practise Physick in London.

William Rose, ... Plaintiff } in
The College of Physicians, London, Defendants } Error.

15th *March*, 1703.

In the 10th year of *Hen.* 8. the defendants were incorporated; and, in the letters patent granted for that purpose, which were confirmed by stat. 14 and 15 *Hen.* 8. *c.* 5. is, *inter alia*, the following clause: "*Concessimus, etiam "eisdem præsidenti et collegio, seu communitati, et succes- "soribus suis, quod nemo in dicta civitate, aut per septem "milliaria in circuitu ejusdem, exerceat dictum facultatem, "nisi ad hoc perdict, præsidentem et communitatem, seu "successores eorum qui pro tempore fuerint, admissus sit "per ejudem præsidents et collegii literas sigillo suo com- "muni sigillatas, sub pœna centum solidorum pro quolibet "mense, quo non admissus eandem facultatem exercit, "dimidium inde nobis et hæred. nostris, et dimidium dicto "præsidenti et coll. applicandum.*"

The plaintiff, who was an apothecary, and freeman of *London*, attended one *Seale*, a butcher, in the parish of *Saint Martin in the Fields*, and made up and administered proper medicines to him; but, without any licence from the faculty, and also without the direction of any physician, and without taking or demanding any fee for his advice.

The defendants apprehending this conduct to be an infringement of their privileges, brought their action against the plaintiff, to recover the penalty of 5*l. per* month, under the above clause in their charter; and, on the trial, the jury found a special verdict, stating the charter, the confirmatory statute, and the facts of the case; and submitted to the Court, whether the defendant *Rose* did practice physic, within the intent of the letters patent and act of Parliament.—And, after this verdict had been three several times argued in the Court of Queen's Bench, the Judges were unanimously of opinion, that *the facts found did amount*

to the practising physic, within the meaning of the act of Parliament; and gave judgment accordingly.

Hereupon, a writ of error in Parliament, was brought to reverse this judgment; and on behalf of the Plaintiff in error, it was argued, that the consequences of it would not only ruin him, but all other apothecaries; as, in case of the affirmance of this judgment, they could not exercise their profession, without the licence of a physician. That the constant usage and practice, which had always been with the apothecary, was conceived to be the best expounder of this charter; and, that therefore, the selling a few lozenges, or a small electuary, to any person asking a remedy for a cold, or in other ordinary or common cases, where the medicines had a known and certain effect, could not be deemed unlawful; or practising as a physician, when no fee was taken or demanded for the same. That the physicians by straining an act made so long ago, endeavoured to monopolize all manner of physic solely to themselves; and if they should succeed in this attempt, it would be attended with many mischievous consequences: For, in the first place, it would be laying a heavy tax on the nobility and gentry, who, in the slightest cases, and even for their common servants, could not have any kind of medicine, without consulting and giving a fee, to a member of the college: It would also be a great oppression upon poor families, who, not being able to bear the charge of a fee, would be deprived of all kind of assistance in their necessities: And, it would prove extremely prejudicial to all sick persons, who, in case of sudden accidents, or new symptoms, happening in the night-time, generally send for the apothecary; but who should not dare to apply the least remedy, without running the hazard of being ruined.

On the other side, it was contended, that by several orders of the college, its members were enjoined to give their advice to the poor *gratis*; and that not only to such as could come to them for it; but every physician, in his neighbourhood, was obliged to visit the sick poor, at their

own lodgings; and therefore the objection, that, if the apothecaries could not administer physic but by the prescript of a physician, the poorer sort of people would be lost for want of proper remedies, had not the least foundation. And, when these orders were observed not to have their full intended effect, on account of the high prices which the apothecaries generally demanded for the remedies prescribed, whereby the poor were deterred from consulting the physician, for fear of the charge of the physic; the college, by a joint stock, erected several dispensaries in town, where, after the physicians had given their advice *gratis*, the patients might have the physic prescribed, for a third, and generally less, of what the apothecaries used to exact for it; by which expedient, many hundred persons of mean condition, received their cures at a very small expense, and without one farthing profit arising to the physicians. That in cases of sudden and immediate necessity, not only apothecaries, but any other person, might do his best to relieve his neighbour, without incurring the penalty of the law; but there was no reason why the apothecaries, under that pretence, should be permitted to undertake, at leisure, all dangerous diseases; and especially where, as in this city at least, a skilful physician may be as soon had as an apothecary. That, in common or trifling indispositions, the patients themselves were generally their own physicians; and would of course, send for any medicine, of which there had been common experience, for their cure, and which the apothecary might lawfully make up and sell; but, for the apothecary to be permitted to judge of diseases in their beginning, whether slight or not, and to order medicines for the same, would prove both dangerous, and more chargeable. *Dangerous*, because the most malignant distempers usually begin with apparently inconsiderable symptoms, and are many days before they appear in their proper colours; and, as apothecaries are not bred to have suitable skill, the management thereof ought not to be left to their judgment. And *more chargeable*, because, be the disease

ever so slight, the apothecary will be sure to prescribe largely enough; and should he chance to mistake, then that distemper, which, by the discreet advice of a physician, might, by one proper medicine, have been eradicated at the beginning, runs out into great length, to the extreme hazard and great expense of the patient.

But, after hearing counsel on this writ of error, it was Ordered and Adjudged, that the judgment given in the Queen's Bench, for the President and College, or Commonalty of the faculty of Physic, *London*, against the said *Wm. Rose*, should be reversed.

(From 1 Brown Par. Ca. p. 78.)

The King *against* the President and College of Physicians.

(From 7 Term Rep. p. 282)

This was a rule calling on the president and College or commonalty of physic in *London* to shew cause why a mandamus should not issue, commanding them to examine C. Stanger, M.D. as to his qualification and fitness to be admitted into the said Corporation as a member or fellow thereof.

* * * *

Doctor Stanger, after referring to the above statutes (3 Hen. 8: 14 & 15 Hen. 8) and Charter, stated in his affidavit that in 1783 he took a degree of doctor of physic at *Edinburgh* after a residence there for three years, and after having studied physic there and at other places for many years; that afterwards he went abroad to *France*, *Italy*, and *Germany*, and studied physic there for several years more. That in 1789 he obtained a licence from the college of physicians here in the usual way to practise in *London* and within seven miles thereof, and that he has

practised ever since. That in *June* 1796 he applied to the president and college at their general meeting to be admitted by them to be a member of their corporation, submitting himself to be previously examined by them concerning his qualification and fitness to be admitted a member of the corporation, which the college refused. Dr. *Stanger* also added in his affidavit that he was duly qualified and fit to be admitted a member of the college.

The affidavits in answer to the rule disclosed the following (among other) facts. For two hundred years past there have been three classes of persons practising physic in *London* and seven miles round; the fellows; candidates, persons desirous of becoming members and who have been examined and approved by the president and censors to be candidates for election into the society or fellowship; and the licentiates, who may practise as fully in all respects as fellows and have the same benefits and advantages. Various bye-laws have been made by the college respecting the qualifications of persons to be admitted fellows, one of them so long ago as 1637, by which it was ordained that no person should be admitted a fellow unless he had performed all his exercises and disputations in one of our universities without dispensation, and which has continued ever since with some little alterations. To prevent any mistakes arising from the words "*aliquâ Britanniæ Academiâ*" in some of the bye-laws respecting this qualification, an explanatory bye-law was made in 1751, in which it was declared that the meaning of the words was that no person should be admitted who was not a Doctor of Physic of *Oxford* or *Cambridge*. The bye-laws of the college have been revised and altered since the year 1768. By those now in existence no person can be admitted a fellow unless he has been a candidate for a year, except in certain cases hereafter mentioned. No person can be admitted into the class of candidates unless he has been created a Doctor of Physic in the university of *Oxford* or *Cambridge*, or unless he has obtained the same degree in the university of *Dublin* and has been incor-

porated into one of the universities of *Oxford* or *Cambridge*; nor can any such person be admitted into the class of candidates until after he has been examined as to his knowledge of physic in three of the greater or lesser meetings (called the *comitia majora* and *comitia minora* of the college. After a person has been a candidate for a year, he may be proposed by the president at one of the greater meetings and admitted a fellow, if the majority of fellows consent, without further examination. But by two other bye-laws persons not having the above qualifications may be proposed in one of two ways; by one, the president is enabled once in every other year at the *comitia minora* to propose one licentiate of ten years standing, who may (if the major part of the *comitia minora* consent) be proposed by the president at the next *comitia majora* to be elected a fellow, and if the majority of fellows then present consent, he may then be admitted a fellow. By the other, any one of the fellows may propose any licentiate, of seven years standing and of the age of 36, in the *comitia majora* to be examined; if the major part of the fellows consent, such licentiate may be examined by the president or vice-president and censors, and if approved by the major part of the fellows then present, he may be proposed at the next *comitia majora* to be a fellow, and admitted if the majority of the fellows then present consent. The ordinary greater meetings (*comitia majora*) are holden four times a year, and consist of the president or vice-president and ten fellows at the least. The ordinary lesser meetings (*comitia minora*) consisting of the president or vice-president registar and censors of the college, are holden once a month. A letter was also inserted in the affidavits written by King *Charles* the Second to the college not to admit any person who had not had his education in either of our universities of *Oxford* or *Cambridge*: but it was admitted in the argument that no notice could legally be taken of this letter. It was also stated in the affidavits that Dr. *Stanger*, when he was licensed, gave his

faith or promise to the college that he would observe the statutes of the college &c. in the usual mode.

Adair Serjt. Law, *Chambre*, and *Christian*, argued in support of the rule; and

Erskine, *Gibbs*, *Dampier*, and *Warren*, against it.

The case was argued very much at length on three several days: but it is unnecessary to give a detail of the arguments, as the Court in giving their opinions went into them. The points insisted upon by the counsel in support of the rule were these; 1st. That under the general words of the charter "*omnes homines ejusdem facultatis.*" &c. Dr. *Stanger*, who came within that description by his license, had an inchoate right, which authorised him to tender himself to the college for examination in order that he might be admitted, if on examination the president and college thought him qualified; though they admitted that the president and college were the sole judges of his fitness. And they referred to the several dicta of Lord *Mansfield* and *Aston* J. in *R.* v. Dr. *Askew* and others, 4 *Burr.* 2169; 2202; 2193; 2202. Secondly, That the bye-laws requiring an education at either of our universities or at *Dublin* were illegal and void, on grounds of public policy, and also on the ground that they superadded a qualification not required by the Charter, 4 *Burr.* 2198, 9; 2203, 4; and that it narrowed the number of the eligible; *R.* v. *Spencer*, 3 *Burr.* 1827; and *R.* v. *Cutbush*, 4 *Burr*, 2204.

On the other hand it was insisted, 1st. That Dr. *Stanger* had no *right* to be examined in order to be a fellow, either as a licentiate, Dr. *Archer*'s case, 4 *Burr.* 2203; or as coming within the description "*omnes homines ejusdem facultatis*" &c.; but that the election into that body was a mere matter of grant or favor, for that the charter evidently marked out two descriptions of persons, the members of the college (the fellows) and all those who practised physic in *London* or within seven miles thereof, that the former were to superintend the latter; and that if the latter had also a

right to be admitted fellows the distinction between the governors and the governed would be destroyed, and the very object of the charter and act of parliament, in giving to the fellows the superintendance of the others practising physic in and about *London*, would be defeated ;—observing that the usage for a long period was in favour of this construction. 2dly, That Dr. *Stanger*, by giving his faith when he received his licence in 1789, was estopped to object to the bye-laws. But this point was abandoned in the course of the argument; it being considered that he was only bound to observe the bye-laws of the college that were not illegal. 3dly, That the bye-laws were neither against sound policy or law; and instances were alluded to of degrees taken in either of our universities giving privileges to the persons taking them in the other professions. And the counsel observed that the not having taken a degree in one of our universities was not an absolute bar to any person becoming a fellow of the college, there being two modes by which he might gain admission without that qualification.

Lord KENYON, Ch. J. If in deciding this question it were necessary for us to answer all the arguments that have been urged at the bar, I should have desired further time to consider of the subject; but as the grounds on which I am warranted to determine the case lie in a very narrow compass, and I have formed my opinion upon it, I wish to put the question at rest now. By what fatality it has happened that almost ever since this charter was granted this learned body have been in a state of litigation I know not; and I cannot but lament that the learned Judges in deciding the cases reported in *Burrow* did not confine themselves to the points immediately before them, and dropped hints that perhaps have invited litigation; though indeed I cannot see what these parties are contending for that is worth the expense and anxiety attending this litigation. The public already have the benefit of the assistance of the licentiates; and their emoluments, the fair fruits of their education and advice, are just the same as those that the fellows of the college

receive. We have however been pressed with the authority of those who have preceded us here: no person can have a greater veneration for those characters than I have, and if this point had been decided by them, I should have thought myself bound by their decision. But the cases are unlike. The principal ground on which it was said in 4 *Burr.* 2199. that the bye-laws of the college were bad was, that "they interfered with their exercising their own judgment, and prevented them from receiving into their body persons known or thought by them to be really fit and qualified;" and if I had found that objection existed in this case, I should have thought it fatal: but in the very sentence in which Lord *Mansfield* expressed himself as above, he added "such of them indeed as only require a proper education and a sufficient degree of skill and qualification may be still retained." Two universities have been founded in this country, amply endowed and furnished with professors in the different sciences; and I should be sorry that those who have been educated at either of them should undervalue the benefits of such an education.

In this case it is admitted that a licentiate does not *de facto* become a fellow of the college: it is admitted that he must be first examined, and that those who are called the College of Physicians are to judge of his fitness. It seems that the appeal here is rather made *ad verecundiam*, and that Dr. *Stanger* could not be rejected if he were examined. If the college are not judges of the fitness of the person examined, I do not know who is. Then is this a reasonable test of the fitness of the party? possibly they might have framed a better, though I do not say that they could; but the question here is whether this is a reasonable bye-law? According to the concurrent opinions of all mankind it is. The Legislature have considered that persons who have taken their degrees in our universities are entitled to certain privileges in the church. So if we look into our own profession, those who have been educated at our universities have particular privileges; and though the inns of court are not

corporations, yet their regulations shew that this has been considered as reasonable. It is not that a person becomes qualified from keeping his commons within the walls of the inns of court or the universities, but living with those of the profession will probably advance him in the knowledge of that profession for which he is a candidate. Again in the civil law; however competent any particular individual may be from extraordinary endowments or the exertion of superior talents, he must first take his degrees at one of our universities, and afterwards continue a year in a state of probation before he can practise. Those regulations that are adapted to the common race of men are the best: it does not follow that all institutions calculated for the ordinary classes are to be prostrated merely because they stand in the way of some few individuals of superior talents. Then the question is whether this is a reasonable bye-law that requires a degree to be taken at one of our universities, which in general is supposed to be conferred as a reward for talents and learning. If indeed this had been a *sine qua non*, and it had operated as a total exclusion of every other mode of gaining access to the college, it would have been a bad bye-law: but these bye-laws point out other modes of gaining admission into the college. If Dr. *Stanger* has all those requisites that qualify a person for that high station, any one of the fellows may now propose him; he may apply to the honourable feelings of the college, to the very same tribunal to which this mandamus (if it were granted) would refer him; for in all events he must submit to their examination and determination. In the profession of the church, we find that the bishops insist on having a testimonial of the person to be ordained signed by a certain number of clergymen; and though the bishops themselves may have the power of judging of the fitness of the person to be ordained it was never doubted but that this was one reasonable test of fitness, even before examination: it is a test to regulate their own conduct. So here I think this is a reasonable test. Therefore on this short ground, without entering

into any of the other topics that have been argued, I am of opinion that these are good and reasonable bye-laws, and that we are bound to refuse the writ.

Ashhurst, J. Though this matter has taken a considerable time in the argument, it is now reduced to a narrow compass. The counsel who have argued for the issuing of the mandamus do not contend that a licentiate, as such, does *ipso facto* become a member or a fellow of the college: they only say that any man who is fit in learning and morals has a right to offer himself for examination, without any superadded qualification; and therefore that the bye-law requiring "that every licentiate, in order to entitle him to offer himself for examination, shall be a doctor of one of the two universities in *England* or that of *Dublin*," is a void bye-law. It is not denied by counsel who have argued for the rule that the corporation have the right of making bye-laws for the regulation of their own body. And Lord *Mansfield*, on whose authority they ground themselves as in their favour, said in 4 *Burr.* 2199, "that such bye-laws as only require a "proper education and a sufficient degree of skill and quali- "fication may be still retained; that there can be no objec- "tion to cautions of this sort; and the rather if it be true "that there are some amongst the licentiates unfit to be re- "ceived into any society." This brings it then to the question, whether the bye-law now under discussion is or is not to be considered as a bye-law of regulation. It does appear to me that in order to ensure a proper education and a competence in a learning, there cannot be a more likely method than the having spent fourteen years in one of our learned universities, and, after having been examined by persons competent to the subject, having been admitted to a doctor's degree. This it should seem would prevent in *limine* the danger of that happening, which Lord *Mansfield* complains of, namely, of persons being admitted amongst the licentiates unfit to be received into that society. Indeed the Legislature so long ago as the passing of the act of the 14 and 15 *Henry* 8. seemed to shew their own opinion how

much stress ought to be laid on such a kind of test; for there, in speaking of country physicians, the act says, "that no person shall be suffered to exercise or practise in physic through *England* until such time as he be examined in *London* by the president and three elects, and have from them letters testimonial of their approving and examination:" but then the act goes on with this exception (viz.) "unless he be a graduate of *Oxford* or *Cambridge*, which hath accomplished all things for his form without any grace." This shews the opinion of the legislative body of that day; and the college might think it a very fit model for their imitation in the formation of the bye-law now under discussion, and that it would prevent them from having their time too much broken in upon by improper applications for examination. I would not be thought to infer that the gentleman now applying is in any degree deficient either in learning or education: but general laws cannot give way to particular cases; and as this law has been of some standing, we must suppose it has been found to be attended with general convenience, and therefore it should be abided by. I therefore concur in the opinion that the rule for a mandamus should be discharged.

Grose, J. This being a motion for a mandamus to a body incorporated by charter, we must see that we are authorised by the charter or the bye-laws to grant the application. On examining the charter, which was confirmed by act of parliament, we find that there was a select body of eight including the president, and an indefinite number of the commonalty. The election of the president is to be made annually by the college; so also is the election of the four censors. The intention of the crown was to put an end to the mischiefs occasioned by the ignorance of the unskilful practitioners; and for that purpose this corporation was created, with power of making bye-laws, of admitting skilful persons to practise physic, and of preventing all others practising: the great object was to admit only those to practise physic who were (to use the language of the act)

"profound sad and discreet, groundedly learned and deeply studied in physic." How or when the fellows are to be chosen or admitted is not directed by the charter: it is left to the discretion of the persons named in the charter under the general power given to them of perpetuating themselves and of making bye-laws. The charter is therefore silent both as to the election of fellows, and as to the examination of them before election: but the examination is incident to the power of election. The charter being silent on these heads, and the college having the power of making bye-laws, they have made bye-laws to ascertain a criterion of fitness of future candidates, by pointing out in some cases the mode of their education, in others the persons by whom they were to be proposed as candidates. One of these bye-laws is objected to as illegal, because it requires a degree to be taken at one of our universities, which (it is contended) is superadding a qualification to those required by the charter: but I think it is only ascertaining a criterion of fitness as has been done most properly in other professions in cases alluded to both at the bar and bench. Then it is said that a licenciate has an inchoate right: if by that Dr. *Stanger's* counsel mean that he has one qualification which when added to others may give him a right of admission, I agree with them; but the college are to judge of the other qualifications: if by this inchoate right they mean any thing more, I dissent from them. It is admitted by this application that the college have a right to insist on an examination; and upon what ground? as a test of fitness—but though this right is not expressly given to them by the charter, nor is there a word denoting any obligation either to admit or examine, it is incident to their power of judging who is fit to be admitted. That Lord *Mansfield* thought that they have such a right incidently is clear from what fell from him in Dr. *Askew's* case, in which he said, "It is true that the judgment and discretion of determining upon this skill ability learning and sufficiency to exercise and practise this profession is trusted to the college of physicians: and this

Court will not take it from them in the due and proper exercise of it." The same power that authorises them to judge of fitness also authorises them to regulate the mode by which they shall judge. They think, of which they are much better judges than we can be, that every man who is to be a candidate ought either to have taken his degree at one of our universities or in Dublin, or shall be proposed by one fellow, or by the president. The bye-laws requiring this do not appear to me unreasonable or inconsistent with the character any more than requiring a particular mode of education, and in the case so often alluded to Lord *Mansfield* thought such bye-laws were good; for when he recommended it to the college to revise their bye-laws, he said "Such of them indeed as only required a proper education and a sufficient degree of skill and qualification may be still retained." In consequence of that opinion the college have reviewed and altered their bye-laws, requiring in some cases an education at either of our universities or at *Dublin*, in others permitting a nomination of persons as fit to be examined by men whom they deem worthy of such a trust, considering such degree and nomination merely as tests of the person taking it or named having skill and learning and being fit to be examined. And in making these bye-laws I think that the college have shewn a due attention to discharge their duty to the public and to attain the ends of their institution. Therefore I concur in the opinion already given that this rule ought to be discharged.

Lawrence, J. This is an application for a mandamus to compel the College of Physicians to examine Dr. *Stanger* in order that he may be admitted a fellow; and the foundation of the application is that he has been admitted to the practise of physic and is one of the *homines facultatis* within the meaning of the charter; which (it is said) gives him a right to admission, if on examination he shall be found fit; and that all the bye-laws militating against such right are illegal. His counsel have been under the necessity of insisting on the licence giving him a right to examination; for if the

being admitted a member of the body be matter of election, it is immaterial whether the bye-laws be good or bad. It seems to me that the insufficiency of the provisions of the statute 3 *Hen.* 8. probably gave rise to this charter; the object of which was to establish a better mode of determining who were proper persons to be licensed to practise physic, and to prevent the practice of ignorant empirics; and if so, it was not necessary that all men of the faculty should be members of the body. All that was necessary was that it should be composed of a sufficient number of learned and discrete practisers of physic, who should have a power of continuing the succession in such persons as themselves, and that they should license proper persons and restrain unfit persons from the practice of it. If this were the object, is it natural to construe the charter as giving a right to all men of the faculty to become members of this body, when the charter speaks of men of the faculty in a sense contradistinguished from the members of the body; or to suppose that the Crown meant to incorporate all, when the charter was made for the government of some, who, if all were incorporated, could not exist? It is admitted that there were two distinct classes under the charter, and according to Dr. *Stanger's* construction one class, that of the governed, would be extinguished. Another mode of construing the charter in the argument was by considering the words *omnes homines ejudem facultatis* to mean the individual members of the corporation: but if so, there would be no power given to make bye-laws to affect the licentiates; and the clause in the charter that gives the exemption from serving on juries speaks of the person exercising the faculty as contradistinguished from the members of the college; "*nec presidens nec aliquis de collegio prædicto medicorum, nec successores sui, nec eorum aliquis exercens facultatem illam.*" Therefore it seems to me that the *homines facultatis* are not the individual members of the college. Then it was said that there might be some persons who might not choose to become corporators, and that this would make a

class to be governed: but that is improbable; it is not to be supposed that, as the principal object of the charter was to incorporate those who were skilled in physic and to prevent those from practising who were unfit, they to whom the charter was offered would refuse the advantages of this corporation, especially as the obvious means of constituing a body to consist of all would be to make it compulsory on the physicians to become members, as in the case with companies in some city and corporate towns, of which persons carrying on certain trades are obliged to be free. But seeing that there is in some degree an uncertainty as to the words "*homnes ejusdem facultatis*," the usage that has prevailed ought to govern us in the construction of them, especially as the usage perfectly accords with the design of the incorporation. It is said indeed that the usage is in favour of Dr. *Stanger's* claim: but that is not so; for there is no proof that before these bye-laws were made any persons were admitted into the body as a matter of right, and we must therefore take it that they came in by election. If Dr. *Stanger* claim as a matter of right, it must be under the words of the charter "*quod ipsi omnesque homines ejusdem facultatis* &c:" but if this gave him a right, the college could not resist his claim though he would not submit to examination. And if every *homo ejusdem facultatis* came within this description of claim, Dr. *Archer* would have had a right to be admitted. The charter does not say that all the men of the faculty, who on examination shall be found fit, shall be admitted; if it has said any thing in their favor, it has given them the right as soon as they become men of the faculty; it has directed no examination. Suppose by a charter all the weavers of a town were incorporated, they would all have a right to be admitted without any examination. If then all the men of the faculty within the limited district have a right from being men of the faculty, they possess all the fitness that the charter requires. This seems to me to be only a contrivance to get out of Dr. *Archer's* case, and to set up a right on the ground of being a licen-

tiate. In the course of the argument it was said that only those were to be admitted who were "profound sad and discrete, groundedly learned and deeply studied in physic:" but if so, it destroys the argument arising from the words "*omnes homines ejusdem facultatis.*" An argument has also been drawn from the statute 3 *Hen.* 8:, and it has been said that the persons licensed by that act were the only persons who at the time of the charter were men of the faculty, and that they and the six persons named were meant to be incorporated. But the words of the charter do not extend to all those persons; they are confined to the "*homines de et in civitate prædictâ,*" that is, to all men of and in the city of *London* practising physic: but this does not extend to persons practising in other places. Now if that construction had been adopted, it would have excluded the greater part of those who have been members of the college practising physic in *Oxford*, *Cambridge*, and other places beyond these limits, as not falling within the description of those persons of whom (according to the construction) the college is to consist.

Taking the whole of the charter and the usage this construction will reconcile all the difficulties; the intention of the Crown was to incorporate the six persons named in the charter and all men practising physic at that time *de et in civitate prædicta*; and all those persons were entitled to admission: but the Crown did not intend to give any right to those, who might thereafter become *homines facultatis*, but intended that the succession should be continued by the power incident to all corporations to elect. Had the charter of incorporation nominated every man authorised to practise physic in *London* and given no directions as to the succession, they would have been authorised to continue themselves by election as they have done; and the charter has done the same thing in substance by incorporating the same persons by a general reference to their character and situation. This avoids all contradiction; it is consistent with the usage; and according to this construction no one is entitled

as a matter of right but only by election. In making such elections there is a trust and duty to keep up the body by a choice of learned men sufficient to answer the purposes of the charter; and if this be done all the interest that the public have is consulted; they have no interest in this or that man being a member of the college; so long as the body is continued and there are proper censors elects and other officers, and so long as proper persons are licensed and improper ones restrained, the objects of the charter as far as concerns the public will be attained. We have been pressed however with the dicta of Lord *Mansfield* in *R.* v. Dr. *Askew*; very great deference is always due to whatever fell from him: but it sufficient to say that this was not the point then before the Court, the only question there being whether licentiates were of the body.

On the other question respecting the validity of the bye-laws, I can hardly add to what has already been said by the Court; and therefore shall only say that I agree with them in thinking the bye-laws reasonable.

Rule discharged (*a*).

(*a*) Dr. *Stanger* had before made an unsuccessful application to this Court. He had obtained a rule calling on the president and fellows of the college to shew cause why a mandamus should not issue "commanding them to admit him to examination for admission into the class or order of candidates for election into the society or fellowship of the said college." But as Dr. *Stanger* had presented himself to the *comitia minora* to be examined, which court is constituted by one of the bye-laws with power only to examine candidates of a certain description within which Dr. *Stanger* did not come, this Court in *Easter* term 1796 discharged the rule for the mandamus; saying that it did not appear that Dr. *Stanger* had a right to be examined by the *comitia minora*; but that if he had any title as being one of the *homines facultatis* under the charter, he should apply to the body at large. The Court also intimated at that time a strong opinion that the bye-laws were reasonable and valid.

Return to a Habeas Corpus.

(Goodall. 467)

London. ss. *Nos* Johannes Warner & Thomas Adams *Vic' Civitat'* London, *Serenissimo Domino Regi in brevi huic schedul' annex' nominat' ad diem & locum in eodem brevi content' Certificamus, quod ante adventum nobis praedict' brevis scil' duodecimo die Septembris Anno regni dicti domini Regis nunc Anglie &c. decimo quinto* Christoferus Barton *in dicto brev' nominat' commissus fuit Prisone dom' Regis scil' Computator' scituat' in* Wood Street London *prædict' & in eadem Prisona sub custodia* Isaaci Pennington & Johannis Woollaston *tunc vic' Civitat' praedict' & in eorum exit' ab officio suo sub custodia nostra detent' virtute cujusdam Warranti* Otwelli Meverell, Laurentii Wright, Edmund Smith, & Willielmi Goddard *in Medicinis Doctor' & Collegii Medicor' in* London *praedict' custodi praedict' Computatorii* London *praedict' vel ejus deputat' direct' Cujus quidem Warranti tenor sequitur in hæc verba.*

[A Copy of the Censors Warrant for the Commitment of Empiricks to prison.]

" ss. We *Otwell Meverell*, *Lawrence Wright*, *Edmund* " *Smith* and *William Goddard* Doctors in Physick and Cen- " sors of the Collage of Physicians in *London*, being chosen " by the President and Collage of Physicians aforesaid to " govern and punish for this present year all offenders in " the faculty of Physick within the City of *London* and " the Suburbs thereof and seven miles compass of the said " City, according to the authority in that behalf duly given " by certain Letters Patents under the great Seal of *Eng-* " *land* made and granted to the said Collage and Commi- " nalty by the late King of famous memory King Henry the " Eighth, bearing the date the 28th day of *September* in " the Tenth year of his Raigne, And one Act of Parliament " made in the 14th year of the said late King *Henry* the " Eighth concerning Physicians Whereby the Letters Patents " aforesaid and every thing therein are granted and con-

" firmed: And by virtue of the said Act of Parliament and " Letters Patents aforesaid and one other Act of Parliament " made in the first year of the Raigne of our late Sove- " raigne Lady Queen *Mary* instituled *An Act touching* " *the Corporation of Physicians in* London, did cause to be " brought before us the sixth day of this instant *September* " at our Collage house in *Pater noster Rowe* in *London* " one *Christofer Barton*; and we have examined the said " *Christofer Barton*, and upon his examination and other " due proofs we have found that the said *Christofer Barton* " hath unskilfully practised the Art of Physick within the " City of *London* and Precinct aforesaid upon the bodies of " *Richard Ballady* of *Aldermary* Parish *London*, *Michael* " *Knight* of St. *Buttolphs* Parish *Aldgate London* and the " child of one *Jane Brigge* and some others in the month " of *January* in the year 1638, contrary to the Laws in that " behalf made and provided; whereupon we have imposed " upon the said *Christofer Barton* a fine of 20*l.* for his evil " practice in Physick aforesaid; and we have also for the " same cause sent you the body of the said *Christofer* " *Barton*, Willing and requiring you in the King's Majesties " name to receive and keep him in safe custody as Prisoner, " there to remain at his own costs and charges without bail " or mainprize untill he shall be discharged of the said im- " prisonment by the President of the said Collage, and by " such persons as by the said Collage shall be thereunto " authorised according to the Statute in that behalf made, " And this our warrant shall be your discharge. Given at " the said Collage the eleventh day of September in the " 16th year of the Raigne of our Soveraigne Lord King " *Charles.*

Otwell Meverell,
Law. Wright, Edmund Smith,
William Goddard.

To the Keeper of Woodstreet Compter,
London or his Deputy.

Note. This Christopher Barton, like James Leverett a Gardener (whose case and the reference of it by the Court of Star Chamber to the College, are recited in Goodall p. 447) and the more celebrated Valentine Greatrex, was one of those Empirics, half enthusiasts and half imposters, who pretended to perform cures by touching or stroaking.

Doctor Burgess' Case.

(Goodall's Proceedings 376)

Doctor *Burgess* having been in Orders and now practising Physick in *London*, was summoned before the President and Censors to give an account by what authority he practised in this City contrary to the Statute Law of this Kingdom. He ingenuously confessed; Not by any authority, but by the indulgence of the College; and told them he had formerly offered himself to examination, though he had not yet been examined. The President replied, that by a Statute of the College (which was read by the Register) they could not examine admit or permit any to the practice of Physick, who had been in Holy Orders. Besides if the Statutes of the College would allow it He told him an admission to a person that had been so qualified was repungant to the Statute Laws of the Kingdom and Canons Ecclesiastical. He replied with great temper and candour, that he would not contradict either the one or the other, but lay down practice in *London*. After this he was convened a second time before the President and Censors and interdicted the practice of Physick within the College Liberties, to which he submitted and promised that he would speedily betake himself to the Country. Some of the Fellows of the College were complained of for consulting with him.

Doctor Winterton's Letter to the President.

My service and best respects remembered.

Master President and my much honoured friend Whereas I am given to understand that you have heard that the last year I would not give way to two or three for the obtaining a Licence to practise Physick, nor to a Doctor of Leyden to be incorporated with us without giving publick

testimony of his abilities, and I further understand that yourself and the whole College are well pleased therewith, I have cause to rejoice: and further thought fit at this time to acquaint you with my real intentions, which I shall eagerly prosecute, if I may have countenance and assistance. I have observed and have grieved to see sometimes a Serving-man sometimes an Apothecary oftentimes Masters of Arts (whereof some have afterwards assumed holy Orders) admitted to a Licence to practice in Physick, or to be incorporated to a Degree without giving any publique testimony of their learniug and skill in the Profession. And what hath followed hereupon? The Minister hath neglected his own calling and trespassed upon another's, not without endangering the Souls of the people of God, and the losse of the Lives of many of the King's Subjects. The Serving-man and Apothecary upon a Licence obtained have been presently made Doctors by the breath of the people, and Doctors indeed undervalued. Masters of Arts after Licence obtained have taken as I said holy Orders, that if one Profession did faile them another might supply them. And Incorporation being in an instant obtained by a little summe of money which by orderly proceeding (I speake concerning the Doctor's Degree) would cost 12 years study in the University besides performance of exercises and much expence; It is come to passe, that in the University at this time I doe protest I doe not know any one that intends the study of Physick, and practice thereof according to the Statutes. Chirurgeons and Apothecaries are sought into, and Physicians seldome but in a desperate case are consulted with, when the Patient is ready to dye and in this kind we have too many examples. The consideration of these mischiefs redounding to the Church, Commonwealth, University, and our Profession, hath often troubled me, when I had no power to prevent them. But now seeing it hath pleased God and the King to conferre such power upon me, that without me neither Licence nor Degree in Physick can be obtained at *Cambridge* (for I have solicited Dr. *Nichols*

and Dr. *Allet* to joyne with me; and I have prevailed soe farre with them that they will doe nothing without me) I doe intend by the grace of God to give way unto noe man to obtain a Licence or Degree without keeping an Act at the least, &c. unless it shall happen that with some one particular man it shall be dispenced withall by supreme Authority or in some extraordinary case. But all this will be to little purpose, unlesse yourselfe and the College will solicite Dr. *Clayton*, his Majesties Professor at *Oxford*, and others of the faculty there, to doe the like; or rather Petition to my Lord's Grace of *Canterbury*, who out of his innate goodnesse, and zeale for the good of the Church and Commonwealth, and the honour of the Universities, I am fully perswaded, will grant what you desire, against Apothecaries and Chirurgeons, and all others which without Licence and authority do practise Physick, I could wish there were some course taken; I know there be already good Lawes, if they were put in execution. This much in haste (as you may perceive by my writing) I thought good to signify unto you, out of the grateful respect which I beare unto yourself and the whole College, tending the honour of our common Profession, which I will maintain as much as in me lyes, and vindicate from the invasions of Usurpers and Intruders. I have exceeded I feare the bounds of a Letter, but that you will pardon I hope considering the occasion. And soe with a gratefull acknowledgment of your love and favour towards me and an ingenuous profession of much service I owe unto you, I take my leave, as one that will be ready, upon the least signification, to embrace your commands, and execute them with all alacrity.

Yours in all dutiful respects
RALPHE WINTERTON.

From the King's College in Cambridge,
August 25th, 1635.

LILLY'S DIPLOMA.

THE LICENSE OF DR. SHELDON, ARCHBISHOP OF CANTERBURY, GRANTED TO WILLIAM LILLY, THE ASTROLOGER, TO PRACTISE PHYSIC. *Dated A. D.* 1670.

"Gilbertus providentia divina Cantuariensis Archiepiscopus totius Angliæ Primas et Metropolitanus, dilecto nobis in Christo *Gulielmo Lilly* in Medicinis professori, salutem, gratiam, et benedictionem. Cum ex fide digna relatione acceperimus te in arte, sive facultate medicinæ per non modicum tempus versatum fuisse, multisque de salute et sanitate corporis verè desperatis (Deo omnipotente adjuvante) subvenisse, eosque sanasse, nec non in arte predicta multorum peritorum laudabili testimonio pro experientia, fidelitate, diligentia et industria circa curas quas susceperis, peragendas in hujusmodi arte Medicinæ merito commendatum esse, ad practicandum igitur, et exercendum dictam artem Medicinæ in et per totam Provinciam nostram Cant: (*Civitate Lond' et circuitu septem millarum eidem prox' adjacen' tantummodo exceptis,*) ex causis prædictis et aliis nos in hoc per te juste moventibus, præstito primitus per te juramento de agnoscendo Regium supremam potestatem in causis ecclesiasticis et temporalibus ac de renunciando, refutando, et recusando omni, et omni modo jurisdictioni, Potestati, Authoritati, et Superioritati, foraneis juxta vim formam et effectum Statui Parlamenti hujus inclyti regni Angliæ liceat et non aliter neque alio modo te admittimus, et approbamus tibique licentiam et facultatem nostras in hac parte, Tenore præsentium quamdiu te bene et laudabiliter gesseris benignè concedimus et elargimur. In cujus rei testimorium sigillum (quo in hac parte utimur)

presentibus apponi fecimus. *Dat. Undecimo Die Mensis Octobris, Anno Domini* 1670 *Nostræque Translationis Anno Octavo.*

(L S) *Radulph Snowe, et Edm. Sherman.* } Registrarii.

S. Rich. Lloyd, Sur.

Vicarii in Spiritualibus Generalis per provinciam Cantuariensem.

It does not appear in the memoirs of Lilly, as written by himself, that he ever made an attempt to acquire the elements of medical science, but was directed in his prescriptions by his astrological art only: but having procured the above license he began to practise more openly, and every Saturday rode to Kingston, where the poorer sort flocked to him from several parts, and received much benefit by his prescriptions, which he gave them freely, and without money; from those that were more able he now and then received a *shilling*, and sometimes an *half-crown*, if they offered it to him, otherwise he demanded nothing.

At the Court at the Queen's Palace, the 26th of July, 1809. Present,

The King's Most Excellent Majesty.

Archbishop of *Canterbury.*
Lord Chancellor
Lord President.
Earl of *Liverpool*
Earl of *Harrowby.*
Lord *Mulgrave.*
Mr. Chancellor of the Exchequer.
Mr. Secretary *Canning.*
Sir *David Dundas,* K. B.
Mr. *Ryder.*

Whereas there was this day read at the Board, the humble memorial of Sir Lucas Pepys, baronet, Physician to His

Majesty, and President of the College or Commonality of the Faculty of Physic in *London*, setting forth, that the said President and College have, with great care, pains, and industry, revised, corrected, and reformed a book by them formerly published, intituled *Pharmacopœia Collegii Regalis Medicorum Londinensis*, prescribing and directing the manner of preparing all sorts of medicines therein contained, together with the true weights and measures by which they ought to be made: which book is now perfected and ready to be published, and, it is conceived, will contribute to the public good of His Majesty's subjects, by preventing all deceits, differences, and uncertainties in making or compounding of medicines, if, for the future, the manner and form prescribed therein should be practised by Apothecaries and others in their compositions of medicines: the Memorialist therefore most humbly prays, that His Majesty will be graciously pleased to enforce the observance thereof in such manner as to His Majesty shall seem meet:—His Majesty this day took the said memorial into His Royal consideration, and being desirous to provide in all cases for the common good of his people, and being persuaded that the establishing of the general use of the said book may tend to the prevention of such deceits in the making and compounding of medicines, wherein the lives and health of His Majesty's subjects are so highly concerned, hath therefore thought fit, by and with the advice of His Privy Council, hereby to notify to all Apothecaries and others concerned, to the intent they may not pretend ignorance thereof, that the said book, called *Pharmacopœia Collegii Regalis Medicorum Londinensis*, is perfected and ready to be published: and His Majesty doth therefore strictly require, charge and command all singular Apothecaries and others, whose business it is to compound medicines, or distil oils or waters, or make other extracts, within any part of His Majesty's kingdom of *Great Britain* called *England*, dominion of *Wales*, or town of *Berwick-upon-Tweed*, that they, and every of them, immediately after the said *Pharmacopœia Collegii Regalis*

Medicorum Londinensis shall be printed and published, do not compound or make any medicine or medicinal receipt or prescription, or distil any oil or waters, or make other extracts that are or shall be in the said *Pharmacopœia Collegii Regalis Medicorum Londinensis* mentioned or named, or in any other manner or form than is or shall be directed, prescribed, and set down in the said book, and according to the weights and measures that are or shall be therein limited, except it shall be by the special direction or prescription of some learned Physician in that behalf. And His Majesty doth hereby declare, that the offenders to the contrary, shall not only incur His Majesty's just displeasure, but be proceeded against for such their contempt and offences, according to the utmost severity of law.

STEPH: COTTERELL.

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33 *Geo.* 2.—*Burrow's Reports.*

Rex *vers.* Master and Wardens of the Company of Surgeons in London.

This was a cause that stood in the Crown-Paper, upon a Return to a *Mandamus* directed to the Master and Wardens of the Company of SURGEONS of *London:* Reciting a Custom in the said City, "That every Freeman of the said City, "using and exercising the Art, Science, or Mystery of *Sur-*"*gery* within the said City, hath *a Right*, in respect thereof, "*to have and take* APPRENTICES, of the age of 14 years or "upwards, to be educated and instructed in the said Art, "Science, or Mystery, for the space of 7 years; which said "*Apprentices* have been used and accustomed to be ADMIT-"TED *and* BOUND *in the presence or with the consent of the* "*Master and Wardens or some of them;*" And reciting that

Richard Guy, a Freeman of the said City, and also one of the Freemen of the said Company of Surgeons of the said City, being desirous of taking *Melmoth Guy*, his son, aged 15 years, to be his Apprentice for the Term of 7 years, to be educated and instructed in the said Art, Science, or Mystery of Surgery, had often offered the said *Melmoth Guy* to be admitted and bound, before the said Master and Wardens or some of them, his said Apprentice for the Term of 7 years, in the said Art, Science, or Mystery, according to the said custom; and that the said *Melmoth Guy* had also often offered himself to them or some of them, to be admitted and bound before them or some of them, an Apprentice to the said *Richard Guy* for the said Term, in the said Art, Science, or Mystery; and that the said Master and Wardens had *not permitted* the said *Melmoth Guy* to be bound Apprentice to the said *Richard Guy*, for the Term of 7 years, before them or any of them, but have altogether refused and still refuse so to do; and commanding them, immediately and without delay, in due manner to *permit* the said *Melmoth Guy* to be ADMITTED and BOUND, before them or some of them, *an Apprentice* to the said *Richard Guy*, for the Term aforesaid, in the said Art, Science, or Mystery according to the said custom, or signify cause to the contrary.

The Return of the Master and Wardens admits the whole of the custom and facts, to be as they are alledged in the Writ. But they further certify and return, That long before the said *Richard Guy* offered his said son *Melmoth*, or the said *Melmoth* offered himself to them or any of them, to be admitted and bound before them or any of them, an Apprentice for the said Term of 7 years, in the said Art, Science, or Mystery of Surgery, according to the custom aforesaid; and after the making of a certain Act of Parliamont intitled "An Act for making the Surgeons of *London*, "and the Barbers of *London*, two separate and distinct "Corporations;" to wit, on the 7th day of *April* in the Year of our Lord 1748, *at Stationers-hall* in *London* afore-

said; *John Freke*, then and there being Master of the said Company of *Surgeons*, and *William Pyle* and *Legard Sparham*, then being two of the Governors of the said Company of Surgeons, before that time duly elected chosen appointed and sworn into their said respective offices; and also *John Ranby* esq. *Cæsar Hawkins* esq. *William Petty* esq. *Joseph Sandford*, *William Cheseldon* esq. *James Hicks*, *Peter Sainthill*, *Noah Roul*, *John Westbrook*, *William Singleton*, *James Phillips*, *Joseph Webb*, *Mark Hawkins*, *Christopher Fullagar*, *Edward Nourse*, *John Girle* esq. and *John Townsend*, being then and there Nine and more of the Members of the Court of Assistants of the said Company of Surgeons before that time duly elected chosen appointed and sworn to be of the said Court of Assistants, did hold a Court and Assembly, at *Stationers-hall London* aforesaid, in order to treat and consult about and concerning the Rule Order State and Government of the said Company of Surgeons; and that the said *John Freke*, so being then and there Master of the said Company of Surgeons, and the said *William Pyle* and *Legard Sparham*, so being then and there two of the said Governors of the said Company of Surgeons, and the said *John Ranby* esq. *Cæsar Hawkins* esq. &c. &c. &c. so being then and there nine and more of the Members of the said Court of Assistants of that Company, being all then and there duly assembled as aforesaid, did then and there, according to the Form of the Statute in that case made and provided, make ordain constitute and establish a certain BYE-LAW *and* ORDINANCE, for the Regulation Government and Advantage of the said Company of Surgeons, in the words following. To wit, *Item*, It is *Ordained* "That *no Member* of the said Company *shall take* any Per- "son into his Service, *as his Apprentice*, to be instructed "in the Art or Science of Surgery, for any shorter time than "7 years; *which person* SHALL UNDERSTAND *the* LATIN "*Tongue;* his ABILITY *wherein* shall, BEFORE *his being* "*bound*, be *tried by the Governors or one of them.* And "every Freeman of this Company or Foreign brother shall,

"within one month next after his entertainment of any Per-
"son in order to being his Apprentice, *Present* such Person
"before the Governors or two of them, *at a Court to be by*
"*them held;* and *there bind* such Person to him *before the*
"*said Governors,* by Indenture; upon pain of forfeiting 20*l.*
"of lawful money: And the Clerk of the said Company
"SHALL NOT BIND any Person who has *not* been so presented
"and examined, upon pain of forfeiting the sum of 10*l.* of
"lawful money and being liable to be removed from his said
"Office. And no Apprentice shall be turned over from one
"Master to another, but at a Court in the Presence of the
"Master and Wardens or one of them: And One Guinea,
"and no more, shall be paid for the same."

Which said *Ordinance* or *By-Law*, so made as aforesaid, after the making thereof as aforesaid, and long before the said *Richard Guy* had offered the said *Melmoth*, or the said *Melmoth* had offered himself to be admitted and bound before them or any of them, an Apprentice to the said *Richard Guy*, for the Term of 7 years, in the said Art Science or Mystery of Surgery, according to the Custom aforesaid, to wit, on the 9th day of the same *April* in the said year of our Lord 1748, was examined approved and allowed by the Right Honourable *Philip* Lord *Hardwicke* the then Lord Chancellor of *Great Britain*, and by Sir *William Lee* Knt. the then Lord Chief Justice of His Majesty's Court of King's Bench, and Sir *John Willes* Knt. the then Lord Chief Justice of His Majesty's Court of Common Bench, according to the Form of the Statute in that Case made and provided.

They further return That the said Ordinance or By-Law, so made examined approved and allowed as aforesaid, hath ever since the making examination approbation and allowance thereof as aforesaid, been, and now is in full force and effect, and in no wise annulled revoked and vacated.

They then return That after the making examination approbation and allowance of the said Ordinance or By-Law as aforesaid, and before the Issuing of this Writ, to wit, on

the 3d of *May* in the Year of our Lord 1759, at a certain Court then holden at *Surgeons Hall* in the *Old Bailey London*, by *Mark Hawkins* then Master, and *Christopher Fullagar* and *Edward Nourse* then Governors of the said Company of Surgeons, (They the said *Mark Hawkins Christopher Fullagar* and *Edward Nourse*, having before that Time been duly elected chosen appointed and sworn into their said respective Offices, according to the Form of the Statute in that Case made and provided,) came the said *Richard Guy* before the said Court, and offered and presented his said Son *Melmoth;* And the said *Melmoth* did then and there offer himself to the said Master and Governors then being at that Court, to be admitted and bound, before them, an Apprentice to the said *Richard Guy*, for the Term of 7 years, in the said Art Science or Mystery of Surgery; And that the said *Melmoth Guy*, being so offered and presented as aforesaid, was then and there *examined* touching his knowledge in the *Latin* tongue; And his ability therein, *in Pursuance* of the Ordinance or By-Law aforesaid, was then and there *fairly*, *candidly*, and *impartially* TRIED by the said *Edward Nourse*, he the said *Edward* being then and there one of the Governors of the said Company of Surgeons: And that the said *Melmoth Guy*, UPON *such his Examination*, and *upon his Ability* in the *Latin Tongue* being so as aforesaid *tried* by the said *Edward Nourse* (so being one of the Governors or Wardens of the said Company as aforesaid) *was found*, NOT *to understand* the *Latin* Tongue, but to be WHOLLY IGNORANT *thereof;* and was then and there so ADJUDGED *and declared* to be, by the said *Edward Nourse*, on such Trial.—Wherefore the said Court could not consent, but did then and there refuse to permit the said *Melmoth Guy* to be admitted and bound an Apprentice to the said *Richard Guy*, for the Term of 7 years, in the said Art Science or Mystery of Surgery, according to the Custom aforesaid, UNTIL such Time as the said *Melmoth should understand* the *Latin* Tongue, as by the aforesaid Ordinance or By-Law is in that behalf required.

They further return expressly and positively, That the said *Melmoth Guy*, when he was so presented and offered as aforesaid, before the aforesaid Master and Governors or Wardens of the said Company of Surgeons, at the said Court, by them held for the purpose herein before in that behalf mentioned, DID NOT understand the *Latin* Tongue: but WAS UTTERLY IGNORANT of the same: And that the said *Melmoth Guy* hath NOT, at any Time before or since his being so examined and tried as to his Ability in the *Latin* Tongue as aforesaid, *offered himself or been presented* to the said Company or Governors thereof, or any one of them for the Time being, *to be tried* as to his ability in the *Latin* Tongue.

And therefore they cannot permit the said *Melmoth Guy* to be admitted and bound before them an Apprentice to the said *Richard Guy* for the said Term of 7 years, in the said Art Science or Mystery of Surgery, according to the Custom aforesaid, as by the Writ they are commanded.

Mr. *Field pro Rege* objected and argued "That this was "an *insufficient* Return:" For that the *By-Law* is a *bad* one, being made in *Restraint of a natural general and common Right.*

The *first* Restriction of the common Right that every Person has of learning and exercising any Art in any Place, except where it happens to be restrained by Custom, is the Act of 5 *Eliz. c.* 4.

The City of *London* have indeed, *by Custom*, a Power over the Youth of their City, and a Power of excluding Foreigners from exercising Trades within their City.

11 *Rep.* 53. *Taylors of Ipswich Case*, shews the *general* Law to be, that a person ought not to be restrained in his lawful Mystery.

Private Companies can not make Laws contrary to the *General* Law or to the *Customs* of great Cities: though great Cities and Towns may do so. This distinction is mentioned in 6 *Mod.* 120.* *Cuddon* v. *Estwick.* And he cited

* *V.* 1 *Salk.* 193 S. C.

the Case of *the City of London* v. *Vanacker*, in 1 *Ld. Raym.* 496. where *Holt* Ch. J. said that "if the By-Law was for "the *Benefit of the City*, it would be good."

This By-Law, therefore, is not good, without a particular Custom to support it: for it *restrains a Common-Law Right.*

The Return does not aver that the understanding the *Latin* Tongue *is* a *necessary qualification* of a Surgeon: And their Art may certainly be performed *without* it. At least, 'tis no objection to a young Person's being put out to *learn* the Art; whatever it might be to the Admission of a Man to *practise* it.

Besides, "Understanding the *Latin* Tongue," is a very *indefinite* and *vague* expression: And a very different idea of it would be conceived by different persons; as by *Dr. Bentley* (for instance) and by a * Warden of the Surgeons Company.

Bad consequences too, may arise from this By-Law: And if so, it shall not prevail. *Godbolt* 254. S. C. with that of *the Taylors of Ipswich*, (there called *The Cloth-workers of Ipswich Case.)*

If the *By-Law is bad*, this young man's not understanding *Latin* will *not cure or help* it. However, the By-Law does *not expressly forbid* such a Person to be admitted: It is *not mandatory*, but only *directory.*

Mr. Serjeant *Hewit contra*, was rising up, to speak in support of the Return,

But Lord MANSFIELD said it was too plain to argue.

Whereupon, *Per Cur.*

RETURN ALLOWED.

* *N. B.* Mr. *Nourse* was in fact a very good Scholar.

MIDWIFE'S OATH.

The Oath to be administered to a Midwife by the Bishop or his Chancellor, when she is licensed to that office, is said to have been as followeth. 2 *Burn Ecc. Law* 469.

"You shall swear, first, that you shall be diligent and "faithful and ready to help every woman labouring with "child, as well the poor as the rich; and that in time of "necessity you shall not forsake the poor woman to go to "the rich.

"*Item.* You shall neither cause nor suffer any woman to "name or put any other father to the child but only him "which is the very true father thereof indeed.

"*Item.* You shall not suffer any woman to pretend, "feign, or surmise herself to be delivered of a child, who "is not indeed; neither to claim any other woman's child "for her own.

"*Item.* You shall not suffer any woman's child to be "murdered, maimed, or otherwise hurt, as much as you "may: and so often as you shall perceive any peril or jeo-"pardy, either in the woman, or in the child, in any such "wise as you shall be in doubt what shall chance thereof, "you shall thenceforth in due time send for other midwives "and expert women in that faculty, and use their advice "and counsel in that behalf.

"*Item.* You shall not in any wise use or exercise any man-"ner of witchcraft, charm, or sorcery, invocation, or other "prayers, than may stand with God's laws and the King's.

"*Item.* You shall not give any counsel or minister any "herb, medicine, or potion, or any other thing to any wo-"man being with child, whereby she should destroy or cast "out that she goeth withal before her time.

"*Item.* You shall not enforce any woman being with "child, by any pain or by any ungodly ways or means,

"to give you any more for your pains or labour in bringing "her to bed, than they would otherwise do.

"*Item.* You shall not consent, agree, give, or keep "counsel, that any woman be delivered secretly of that "which she goeth with, but in the presence of two or three "lights ready.

"*Item.* You shall be secret, and not open any matter ap- "pertaining to your office, in the presence of any man, un- "less necessity, or great urgent cause do constrain you so "to do.

"*Item.* If any child be dead born you yourself shall see "it buried in such secret place, as neither hog, or dog, nor "any other beast may come unto it; and in such sort done, "as it be not found or perceived, as much as you may: and "that you shall not suffer any such child to be cast into the "jaques or any other inconvenient place.

"*Item.* If you shall know any midwife using or doing "any thing contrary to any of the premises, or in any other- "wise than shall be seemly or convenient, you shall forth- "with detect, open, or shew the same to me or my Chan- "cellor for the time being.

"*Item.* You shall use yourself in honest behaviour unto "the woman, being lawfully admitted to the room and office "of Midwife, in all things accordingly.

"*Item.* That you shall truly present to myself or my "Chancellor, all such women as you shall know from time "to time to occupy and exercise the room of a midwife "within my aforesaid diocese and jurisdiction of ——— "without any licence and admission.

"*Item.* You shall not make or assign any deputy or de- "puties, to exercise or occupy under you in your absence the "office or room of a Midwife, but such as you shall per- "fectly know to be of right honest and discreet behaviour; "and also apt, able, and having sufficient knowledge and "experience to exercise the said room and office.

"*Item.* You shall not be privy, or consent, that any "priest or other party shall in your absence, or in your

"company, or of your knowledge or sufferance, baptize any "child by any mass, latin service, or prayers, than such as "are appointed by the laws of the Church of England; "neither shall you consent that any child born by any wo- "man who shall be delivered by you shall be carried away "without being baptized in the parish by the ordinary mi- "nister where the said child is born, unless it be in case of "necessity baptized privately according to the Book of "Common Prayer: but you shall forthwith, upon under- "standing thereof, either give knowledge to me the said "Bishop, or my Chancellor for the time being.

"All which articles and charge you shall faithfully observe "and keep: So help you God, and by the contents of this "book."

(Book of Oaths.)

Certificate of the College of Physicians concerning the Midwives of London.

May it please your Lordships,

Upon consideration taken of this petition hereunto annexed, presented unto the President and College of Physicians by the Midwives, We, the College of Physicians, conceiving the said complaint to be grounded upon just grievance, and to conduce to a general good, in the timely prevention of so growing an inconvenience, have particularly informed ourselves concerning the said business, and do certify that the like project was formerly attempted by another, which is now intended by the doctour, and therefore was referred by *K. James*, of blessed memory, to the Lords of the Council, and by their Lordships to the College of Physicians, to certify their opinion thereof; who upon mature deliberation made report to their Lordships of the unfitness of the said proposition, there being no such custom ever

used either here or in any other kingdom, Wherefore the same was rejected and died. And whereas we understand that the said Doctour doth ground his complaint upon the insufficiency of Midwives, whom he would undertake to teach, though licensed by your Lordship's officers, whom we do believe to be as careful in admitting of Midwives as they are in other kingdoms; only we are informed that divers do practise without licence, and some are deputies to others, through whom we probably conceive some abuses to grow, because their abilities and honesty of lives and conversation are not testified upon oath as others are who are licenced. But for adding sufficiently to them by the Doctour's instruction, he is not otherwise able to instruct them than any other the meanest Fellow of our College, unless he understand it by the use of iron instruments, which Physicians and Chirurgeons may practice if they please; and some do and have done with as good success and dexterity as himself, and therefore there is no necessity of a sole dependance upon him. And it being true that is reported by the Midwives, the Doctour doth often refuse to come to the poor, they being not able to pay him according to his demands; and for the rich he denies them his help until he hath first bargained for great rewards; which besides that they are in themselves dishonest, covetous, and unconscionable courses, they are also contrary to the laws and statutes of our College, to which by oath he is bound. We therefore for this and other reasons we can alledge, conceive his suit to be unreasonable and inconvenient. And so do humbly leave the same to your Lordships' grave judgments, unto whom his Majesty referred the consideration thereof.

(Goodall's Proceedings of the College against Empiricks. p. 465.)

59 *Geo.* 3. *c.* 41.

An Act to establish Regulations for preventing Contagious Diseases in *Ireland.* 14th *June* 1819.

Whereas it has become highly expedient to provide for and secure constant attention to the health and comforts of the inhabitants of *Ireland*, and for the prevention of contagious disease, more especially in the cities and great towns thereof; and that for that purpose officers of health should be annually appointed in all cities and large towns, and that such officers should also be appointed in such towns, parishes, and villages in the country, as shall think it proper or necessary to adopt such a measure; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That within one calendar month next after the passing of this Act, and within one calendar month after the twenty-fifth day of *March* in the year one thousand eight hundred and twenty, and in every subsequent year, in every city and town in *Ireland*, which shall contain one thousand inhabitants, or upwards; and in every city and large town where the Lord Lieutenant, or other Chief Governor or Governors of *Ireland*, shall think fit to direct that this Act shall be carried into effect, the inhabitant householders of each and every parish in such city or town, assembled in vestry, shall and they are hereby required to elect and appoint any number of persons not less than two, and not more than five, to be officers of health for such parish, for the year ending on the twenty-fifth day of *March* next after such election, and until new officers of health shall be in like manner appointed for such parish for the year ensuing.

II. And be it further enacted, That such officers of health, so to be elected and appointed, shall act in the exe-

cution of this Act without any salary, fee, or reward whatsoever; and that the expenses to be incurred by such officers in the execution of their Duties under this Act, not exceeding such sums as shall be specified and determined on, and limited and directed at the vestry to be assembled for the choice of such officers, or at any subsequent vestry to be called by the said officers, shall be raised and levied on the inhabitants of such parish, in such manner and form as other parochial assessments are raised and levied, and shall by the said officers of health be applied to the purposes of this Act; and the expenditure thereof shall be accounted for by the said officers in such manner as other parochial assessments are accounted for, and either at such times as other assessments are accounted for according to law, or at such other times and periods of the year, and as often from time to time as shall be directed at the vestry to be assembled for the appointment of such officers, or at any other vestry to be called by two inhabitants of such parish; and that copies of all such accounts shall once in every year, before the twenty-fifth day of *April* in each year, be transmitted by such officers of health to such public officer, or office or place in *Dublin*, as shall be from time to time directed by the Lord Lieutenant, or other Chief Governor or Governors of *Ireland* for the time being, or his or their Chief Secretary.

III. And be it further enacted, That it shall and may be lawful for the inhabitant householders of any parish, town, or place whatever, in vestry assembled, in any part of *Ireland*, to appoint such officers of health for such parish, in case they shall think fit and expedient so to do; and to raise such sum or sums of money, to be levied and accounted as directed by this Act, in like manner as by this Act is required to be done in cities and large towns as aforesaid.

IV. Provided always, and be it enacted, That no person shall be compelled or compellable to act or serve as such officer of health, in any parish or place, for any longer term than one year, nor to act or serve as such officer for any

year commencing within three years after the end of any year for which he shall have served as aforesaid.

V. Provided also, and be it enacted, That it shall and may be lawful for the inhabitant householders of any parish in any county, city, town, or place in *Ireland*, to elect the churchwardens of such parish for the time being to be officers of health under this Act, in case they shall think fit so to do; and it shall be lawful for such churchwardens, and they are hereby authorized and required, to act as such officers of health accordingly, under the present provisions of this Act.

VI. Provided also, and be it enacted, That where any city or town as aforesaid, containing one thousand inhabitants, or where the Lord Lieutenant or other Chief Governor or Governors of *Ireland* shall direct this Act to be carried into execution, in case the inhabitant householders in any parish or parishes in such city or town shall neglect or refuse to elect and appoint such officers of health, within such time as is required by this Act, or as shall be required by any order of such Lord Lieutenant, or other Chief Governor or Governors, it shall and may be lawful for the Justices of the Peace assembled at the Quarter Sessions, or any adjournment thereof, for the county, city, or town within which such parish shall be situate, and the said Justices are hereby authorized and required, to appoint such officers of health in and for such parish, and also at the same time to appoint and limit what sum shall be raised by assessment on such parish for the purposes of this Act, and such sum shall and may be raised and levied accordingly, in like manner as any other parish assessments, and as if the same had been authorised by the vestries of such parishes, and shall be applied and accounted for in the manner herein before directed.

VII. And be it further enacted, That it shall and may be lawful for any one or more of the persons so to be appointed officers of health, and he and they is and are hereby authorized, empowered, and required to cause and direct all streets and lanes, and all yards and courts adjoining thereto,

and all houses let in several tenements and room-keepers, and the yards, gardens, or places belonging to such houses, to be cleansed and purified, and all nuisances prejudicial to health to be removed therefrom; and all public sewers to be cleansed, and where necessary, to be covered over, and all lodgments of standing water to be filled up or drained off; and also to cause and direct all other matters and things to be done for the ventilation, fumigation, and cleansing of any house whatever, in which fever or other contagious distemper shall have occurred, and for the washing and purifying the persons and clothes of the inhabitants of every such house, as shall appear to any such officer of health to be indispensably necessary for the preservation and security of the inhabitants of such parish against the danger of contagion, unless due precautions shall have previously been taken for such purposes by the inhabitants of such house; and it shall be lawful for all constables and peace officers, and they are hereby authorized, empowered, and required, to be aiding and assisting to such officers of health in the doing all matters and things whatsoever in the execution of this Act.

VIII. And be it further enacted, That in any parish or parishes in any city or town where any such officers of health shall be appointed as aforesaid, and where no power or authority is or shall be vested in or given to Magistrates or Corporation of such city or town, to regulate the sweeping and cleansing of the streets therein, and the collecting and disposing of the dirt, dung, and filth of the said streets, and also in any city or town whatever, where the scavengers or other persons who shall be entrusted with or contract for the cleansing and sweeping of the streets, under the direction of the Magistrates or Corporation or not, shall neglect or omit to cleanse and sweep the streets and lanes of such city or town, twice at least in every week, it shall and may be lawful for such officers of health to cause and direct such streets to be swept and cleansed, and the dirt, dung, and filth collected from the same to be sold and disposed of, and the produce thereof to be applied for the purposes of this

Act, and in diminution of the charge on the parish for which such officers shall be appointed: provided always, that in all cases where the Magistrates or Corporation of any city or town have or shall have power and authority to regulate the sweeping or cleansing of the streets, or where any scavenger or other person shall be appointed or shall have contracted for that purpose, the said officers of health shall give twenty-four hours notice to the chief magistrate of such city or town, and to the scavenger or other person contracting for the cleansing of such streets, of the neglect or omission to sweep and cleanse the same; and that at the expiration of such twenty-four hours, in case the said streets shall not be duly swept and cleansed, it shall be lawful for the said officers of health to cause the same to be swept and cleansed, and the produce thereof to be disposed of as aforesaid, any act, charter, law, usage or custom to the contrary notwithstanding.

IX. And for the preventing the danger of contagion and other evils, from the unrestrained intercourse of strolling beggars, vagabonds, and idle poor persons seeking relief; be it enacted, That from and after the passing of this Act, it shall and may be lawful for any one Justice of Peace within his jurisdiction, or any churchwarden of any parish in any city, town, or place in *Ireland*, or for any officer of health appointed in any parish in pursuance of this Act, and they are hereby respectively empowered and required, to apprehend all idle poor persons, men, women, or children, and all persons who may be found begging or seeking relief, or strolling or wandering as vagabonds within any parish or place, and to direct and cause all such idle persons, beggars, and vagabonds to be removed and conveyed out of and from such parish and place, in such manner and to such place as the nature of the case may require; and it shall and may be lawful for any such Justice of the Peace, upon his own view, or upon the complaint of any churchwarden or officer of health to commit any such strolling beggar or vagabond, or idle poor person, to any Bridewell or House

of Correction, or other public place of confinement, for any time not exceeding twenty-four hours previous to their removal or departure out of such parish; and it shall and may be lawful for any churchwarden or officer of health in such parish, during such period of twenty-four hours, to cause the persons and clothes of such idle poor persons, beggars, or vagabonds so committed, to be washed and cleansed; and it shall be lawful for the Justices of any county, city, or town assembled at any Quarter Sessions or adjournment thereof, to constitute and appoint any suitable unoccupied building to be a Bridewell or place of confinement for such idle persons, beggars, and vagabonds, with the consent and approbation of the owner of such house or building, and to apply to and agree with such owner for such purpose accordingly; and every beadle, constable, and peace officer within their respective districts or jurisdictions, shall be and are hereby required to be assistant to the said Justices of Peace, churchwardens, and officers of health, in such apprehension, and confinement, and treatment of such idle poor persons, beggars, and vagabonds, pursuant to the provisions of this Act.

X. And be it further enacted, That if any person or persons shall resist or oppose any Justice of Peace, churchwarden, or officer of health, in the execution of the powers of this Act, or in the doing or performing of any matter or thing in the execution of this Act, every such person or persons so guilty of resisting or opposing shall, on conviction thereof before any two Justices of Peace or Magistrates within their jurisdiction, on the oath or affirmation of any one or more credible witness, or on the confession of the party so offending, incur such penalty, not less than ten shillings nor more than five pounds, as such Justices of Peace or Magistrates shall in their discretion think proper to adjudge and inflict; or in failure of making payment of such fine, such offenders shall and may be committed to the Common Gaol or House of Correction for any time not exceeding three calendar months; and no such conviction shall

be quashed for informality, nor shall be removed or removable by *certiorari* or otherwise, nor subject to any appeal whatever.

XI. And be it further enacted, That if any action shall be brought against any person or persons for any thing done in the execution of any of the powers or duties by this act given or required, the defendant or defendants may in every such suit plead the general issue, and give this act and the special matter in evidence; and in every case where the plaintiff or plaintiffs in such suit shall fail, the court in which such suit shall be carried on shall award costs to the defendant or defendants.

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14 *Geo. 3. c.* 49.

An Act for regulating Mad-Houses.

Whereas, many great and dangerous abuses frequently arise from the present state of Houses kept for the reception of Lunaticks, for want of regulations with respect to the persons keeping such houses, the admission of Patients into them, and the Visitation by proper persons of the said Houses and Patients: And whereas the law, as it now stands, is insufficient for preventing or discovering such abuses; may it therefore please your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That, from and after the Twentieth day of November One thousand seven hundred and seventy-four, if any person or persons, in that part of *Great Britain* called *England*, the dominion of *Wales*, or town of *Berwick upon Tweed*, shall, upon any pretence whatsoever, conceal, harbour, entertain, or confine, in any house or place, kept for the reception of Lunaticks, more than one Lunatick, at any one time, without having such Licence for that purpose as is herein-after

directed, (except such Lunaticks as are committed by the Lord High Chancellor of *Great Britain*, or Lord Keeper, or Commissioners for the Custody of the Great Seal for the time being), every such person shall, for every such offence, forfeit and pay the sum of Five hundred Pounds.

And, in order that proper persons may be appointed for visiting such houses as shall be licenced and kept for the reception of Lunaticks, within the cities of *London* and *Westminster*, and within seven miles of the same, and within the county of *Middlesex*, be it further enacted by the authority aforesaid, That the President and Fellows of the Royal College of Physicians in *London* for the time being, at a general meeting of the said College, to be held upon the last day of *September*, or if that day falls upon Sunday, then upon the first day of *October*, in every year, shall elect Five Fellows of the said College for granting such Licences as aforesaid, within the said cities of *London* and *Westminster*, and within seven miles of the same, and within the said county of *Middlesex*, according to the directions of this act; and the said Five Fellows, so elected, shall be and are hereby declared to be, Commissioners for granting such Licences within the limits aforesaid, for the year then next ensuing; provided that two, at least, of the said Fellows, to be so elected, shall be persons who have not acted as Commissioners for the preceding year; and that no person whatsoever shall be capable of being elected, or of acting as a Commissioner, for more than three years successively.

And be it further enacted, That in case, at any time of election there shall not be found a sufficient number of Fellows qualified or willing to act as Commissioners, the said President and Fellows are hereby required, upon every such deficiency, to elect one or more from among the Licenciates to supply the same.

And be it further enacted by the authority aforesaid, That as often as any of the Commissioners, to be elected as aforesaid, shall die, or refuse to act, the said President is

hereby required to call a meeting of the said Fellows, within fourteen days next after such death or refusal shall be known to the said President, in order to elect a Commissioner in the room of every Commissioner who shall so die, or refuse to act; and every Commissioner so to be elected, shall be, and is hereby vested with the same power and authority, in all respects whatsoever, as the Commissioner in whose place he shall be chosen was vested with.

And be it further enacted, That every person who shall be elected a Commissioner to act within the cities of *London* and *Westminster*, and within seven miles of the same, and within the county of *Middlesex*, as aforesaid, shall, within ten days after such election, take the following Oath; (that is to say),

> I *A. B.* do swear, That I will faithfully and impartially execute all the trusts committed unto me, by virtue of an Act of Parliament, made in the Fourteenth year of the reign of King *George* the Third, intituled, *An Act for regulating Mad-houses*; and that I will not, directly or indirectly, give notice, or cause notice to be given to the Keeper, or person having the care of any house or place licensed for the reception of Lunaticks, of the time of visitation of such house or place.
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> *So help me* GOD.

Which Oath it shall and may be lawful for the President of the College of Physicians for the time being to administer to every such Commissioner, so to be elected as aforesaid, upon the day he shall be so elected, or within ten days afterwards: And in case any person who shall be elected a Commissioner as aforesaid, and who shall be summoned by the President of the said College to attend the said President to take the said oath, at such time as shall be mentioned in such summons, shall refuse or neglect to attend, or attending, shall refuse to take the said oath, he shall forfeit and pay the sum of Five Pounds, to be applied to the use of the said College.

And be it further enacted by the authority aforesaid, That the said Commissioners, so to be elected as aforesaid, or any three or more of them, shall meet in the hall, or some other convenient place in the said College, as often as they shall think fit, so as such meetings do not interfere with the meetings of the Board of Censors, nor with any other general meeting of the College of Physicians; and that at all meetings of the said Commissioners to be holden for the purposes of this act, the Commissioner who is of the longest standing in the College shall be Chairman.

And be it further enacted, That the Treasurer of the said College for the time being shall be the Treasurer for the purposes of this act; and that the said Commissioners, or any three or more of them, shall at some meeting, to be holden within fourteen days next after they shall be elected as aforesaid, chuse and appoint a proper person to be their Secretary for the year then ensuing; and such Secretary shall be paid such salary or gratuity, for his trouble and attendance in the execution of his office, by the said Treasurer, as the said Commissioners, or any three or more of them, shall order and direct; and every such Secretary shall, at the next meeting of the said Commissioners after he shall be so appointed, take the following Oath:

I *A. B.* do swear, That I will faithfully execute all such trusts as shall be committed to my charge, as Secretary to the Commissioners for executing an Act of Parliament, made in the fourteenth Year of the reign of King *George* the Third, intituled, *An Act for regulating Madhouses*; and that I will keep secret all such matters as shall come to my knowledge, in the execution of my office, (except when required to divulge the same by legal authority).

So help me GOD.

And be it further enacted, That the said Commissioners, or any three or more of them, shall meet annually on the third *Wednesday* in the month of *October*, or within ten

days afterwards, in order to grant Licences to persons for keeping houses for the reception of Lunaticks for one year, from the twentieth day of *November* then next ensuing, within the said cities of *London* and *Westminster*, and within seven miles of the same, and within the said county of *Middlesex*; but notice of the place, and of the day and hour of every meeting for granting such Licences, shall always be published three several times in the *London Gazette*, before the day of meeting for granting any such Licences, (which Licences they are hereby required to grant to all persons who shall desire the same); and all Licences to be granted by the said commissioners shall be duly stamped with a five shillings stamp, and shall be under the hands and seals of three or more of the said commissioners, for each of which Licences there shall be paid to the said secretary, by the person applying to take out the same, the sums following; (that is to say), for each and every house wherein there shall be kept any number of Lunaticks, not exceeding ten, the sum of ten pounds; and for each and every house wherein there shall be kept above ten, the sum of fifteen pounds, and no more, over and above what shall have been paid for the said stamp; which money shall be paid over by the said secretary to the treasurer; and the further sum of six shillings and eightpence, and no more shall be paid on every such licence to the said secretary for his fee.

Provided always, That no one Licence shall authorise any person or persons to keep more houses than one for the reception of Lunaticks; nor shall any Licence, to be granted by virtue of this act, continue in force for any longer time than for one year.

And be it further enacted by the authority aforesaid, That no commissioner, to be appointed as aforesaid, shall, directly or indirectly, during the time he shall be a commissioner, be interested in keeping any house for the reception of Lunaticks, upon pain of forfeiting, for such offence, the sum of fifty pounds.

And be it further enacted, That the president of the said College of Physicians for the time being shall, and is hereby required to cause summons to be sent to the said several commissioners, requiring them to attend at the first meeting after they shall be appointed commissioners, as aforesaid; all which summons shall be sent by the beadle, or such other person belonging to the said College, as the said president shall think proper; and shall be left at the respective houses, or usual places of abode, of each commissioner.

Provided nevertheless, That in case any two commissioners shall, at any time or times, think proper to call a meeting of the said commissioners, such two commissioners may themselves cause the like notice to be given, and to be sent, in manner aforesaid, to the other commissioners, requiring their attendance at such time and place as shall be expressed in such notice.

Provided always, That at all meetings of the said commissioners in the execution of this act, in case of an equality of votes, the chairman shall have the casting vote.

And be it further enacted, That the said commissioners, or any three or more of them, either by themselves or with their secretary, as they shall think fit, shall, and they are hereby required, once at least in every year, and whenever required by the Lord High Chancellor, or Lord Keeper, or Commissioners for the custody of the Great Seal, or by the Lord Chief Justice of the Court of King's Bench, or by the Lord Chief Justice of the Court of Common Pleas, for the time being, to visit and inspect all such houses as shall have been licensed by them, as aforesaid, between the hours of eight and five in the day-time; and may, in like manner, at any other time or times, within the hours aforesaid, visit and inspect all such houses as often as they, or any three or more of them, shall think necessary, and shall have, at all such times, liberty and power to continue in such house, and to examine the persons confined as Lunaticks therein, for such time as they shall think proper.

And be it further enacted, That the said commissioners, or their secretary, shall, at every such visitation, make minutes, in writing, of the state and condition of all such houses which they shall so visit, as to the care of the patients therein, and all such other particulars as they shall think deserve their notice, together with their observations thereupon; all which minutes shall, within one week next after such visitation, be by the said secretary entered, by way of report, in a register to be kept by him in the said College of Physicians for that purpose, and the same shall be read to, and signed by, the said commissioners, or any three or more of them, at their next meeting: but no minute which tends to impeach the character of any house shall be so entered, unless such minute shall have been previously signed by three or more of the said commissioners who shall have been present at such visitation; and in case the commissioners, upon their visitation, shall discover any thing that, in their opinion, shall deserve censure or animadversion, they shall, in that case, report the same: and such part of their report, and no more, shall be hung up in Censor's room of the College, to be perused and inspected by any person who shall apply for that purpose.

And be it further enacted, That in case the keeper of any house or place for the reception of Lunaticks, within the cities of *London* or *Westminster*, or within seven miles distance thereof, or within the county of *Middlesex*, shall refuse all or any of the said commissioners, at the time of their visitation, admittance into such house or place as aforesaid, with or without their secretary, the master or keeper of such house or place shall, for such offence, forfeit his licence.

And be it further enacted, That the said commissioners, or any three or more of them, shall, from time to time, cause an exact account to be kept of all their proceedings; and all such accounts shall be entered in the same register as the minutes taken at their visitations are directed to be entered as aforesaid; and the said register shall be lodged in

the College of Physicians in a strong chest or box, which said chest or box shall be under the care of the beadle or house-keeper belonging to the said College, and shall be carefully locked up, from time to time, by the secretary to the said commissioners, and the key thereof kept by such secretary; which said register shall be deemed to belong to the said commissioners, and the key of the said chest or box shall be delivered over to every succeeding secretary, whenever the former secretary shall go out of office, and be kept by such succeeding secretary in manner aforesaid, for the use of the said commissioners.

Provided always, That the president of the said College shall have liberty to inspect the said register, from time to time, as often as he shall think proper, provided such inspection be made at the College, and in the presence of the secretary to the said commissioners.

And be it further enacted, That if any person shall apply to one of the commissioners, in order to be informed whether any particular person or persons have been confined in any of the said licensed houses, and the said commissioners shall think it reasonable to permit such inquiry to be made, and shall sign an order, directed to the secretary for that purpose; he, the said secretary, is hereby required, upon the receipt of such order, to make search upon his papers: and if it shall appear upon such search, that the person or persons so enquired after have been confined in any of the said houses, the said secretary shall immediarely acquaint the persons so applying with the name of the keeper in whose house, and also the names of those by whose direction and advice, such person or persons have been so confined.

And be it further enacted, That the said treasurer shall, and is hereby required to pay to each of the commissioners for every time they shall, in obedience to this act, or any requisition therein contained, visit and inspect any such licensed house or place, as aforesaid, within the limits aforesaid, the sum of one guinea; and shall also pay and discharge all such reasonable expenses of the said commissioners as

they shall, from time to time, incur in the execution of this act; and the said treasurer is hereby required, from time to time, to keep an exact and true account of all monies by him received and disbursed in relation to this act, and shall enter such account in a book to be kept for that purpose; which book shall be lodged in the box or chest where the register of the proceedings of the said commissioners is directed to be kept, as aforesaid: which accounts shall be produced to the president of the said college, when required by the said president and elects, to be examined and settled by them; and if, upon such examination, the said accounts shall appear to be just and reasonable, the same shall be allowed and signed by the said president, and at least four of the elects, and shall be by the said president reported, together with the other accounts, at the next General Meeting of the said college; and the said account, being so allowed, signed, and reported, shall be a full discharge to the said treasurer for so much money as shall in such account appear to have been disbursed by him, on account of the execution of this act.

And, in order that the said commissioners may know when any patient is received into any such licensed house or place, as aforesaid, be it further enacted by the authority aforesaid, That the keeper of every such licensed house or place within the said cities of *London* and *Westminster*, and within seven miles of the same, and within the said county of *Middlesex*, is hereby required, within the space of three days after any patient shall be received into any such licensed house or place, (except such pauper lunaticks as shall happen to be sent there by parish officers), to cause notice thereof to be given to the secretary to the said commissioners, which notice shall contain the name of every such person received as a lunatick into such house or place, the name or names, and place or places of abode, of the person or persons by whose direction such lunatick was sent to such house or place, and also the name and place of abode of the physician, surgeon, or apothecary, by whose advice such direction was given; all which notices shall be sent sealed

up, directed *To the Secretary to the Commissioners for licensing Houses for the Reception of Lunaticks, to be left with the Beadle of the College of Physicians in London*; all which notices the said beadle is hereby directed to receive, and to deliver to the said secretary, within two days after the same shall come to his hands; and the secretary is hereby required to file and preserve all such notices, and also to enter, or cause a copy or extract thereof to be entered, in the register, within two days after the receipt of such notices; and every keeper of any such licensed house or place, who shall admit, harbour, entertain, or confine, any person as a lunatick, without having an order, in writing, under the hand and seal of some physician, surgeon, or apothecary, that such person is proper to be received into such house or place as a lunatick, or shall receive any lunatick into any such house or place, having such order, and shall not give notice thereof to the secretary of the said commissioners, within the time, and in the manner aforesaid, shall forfeit and pay the sum of One hundred pounds.

And, in order that such houses or places for the reception of lunaticks as are not situated within the limits aforesaid may be put under some regulation, be it further enacted, That no house, which is not within the said city of *London*, or within seven miles of the same, or within the said county of *Middlesex*, shall be kept for the reception of more than one lunatick, unless such house or place shall be licensed by the Justices of the Peace, at some Quarter Sessions of the Peace to be holden for the county or place wherein such house or place shall be situated.

And be it further enacted, That the Justices of the Peace, at any General Quarter Sessions of the Peace, to be holden for any such County or Place, are hereby authorised and required to grant Licenses to such person and persons as shall apply for that purpose, such person or persons paying for each License the sums following; (that is to say), for each and every house, wherein there shall be kept any number of lunaticks, not exceeding ten, the sum of Ten Pounds, and no more; and for each and every house, wherein there

shall be kept above the number of ten lunaticks, the sum of Fifteen Pounds, and no more; and that no one License shall authorise any person or persons to keep more houses than one for the reception of lunaticks, nor shall any such License be granted for any longer term than for one year; and the said Justices shall, at the time of granting such Licenses as aforesaid, nominate and appoint two Justices of the Peace for the said County, and also one Physician, to visit and inspect all such houses as shall be licensed by such Justices as aforesaid; and the said Justices and Physicians, so nominated and appointed, or any two of them, whereof the Physician to be one, may, and are hereby authorised and impowered to visit, in the day-time, every house so licensed, within the County where such house or place shall be so licensed, as often as they shall think fit.

And be it further enacted, That the said Justices and Physicians, so nominated, or such of them as shall visit any licensed house as aforesaid, may, at every visitation, if they think necessary, make, or cause to be made, minutes, in writing, of the state and condition of every house which they shall visit, as to the care of the patients therein, and all such other particulars as they shall think deserve their notice, together with their observations thereupon; all which minutes shall be entered, by way of report, in a Register to be kept for that purpose, by the Clerk of the Peace for the County where such house or houses shall be licensed as aforesaid, a copy whereof shall, from time to time, be sent by the said Clerk of the Peace to the Secretary to the said Commissioners, to be by him inserted in a separate Register; which Register shall be kept in the same box, and in the same manner, as the Register belonging to the said Commissioners is herein-before directed to be kept; and the said Clerk of the Peace shall be paid such sum and sums of money for his trouble in the execution of this Act as the said Justices shall order and direct; and all money to be paid for such Licenses as shall be granted by the said Justices of the Peace, as aforesaid, shall be paid to the Clerk of the

Peace, as aforesaid, who shall keep an account thereof, in a book or books to be kept for that purpose, and shall account for the same to the said Justices, as often as he shall be required so to do; and all expenses attending the execution of this Act, (except within the cities of *London* and *Westminster*, and within seven miles thereof, and also except within the said County of *Middlesex*), shall be defrayed out of such money as aforesaid, in such manner as the said Justices shall, from time to time, within their respective Counties, order and direct.

And be it further enacted, That at such General Quarter Session, when such Justices and Physician shall be appointed as aforesaid, the Clerk of the Peace shall take the like Oath as is appointed by this Act to be taken by the Secretary of the Commissioners.

And be it further enacted, That in case the keeper of any house or place for the reception of lunaticks, not being within the said city of *London* or *Westminster*, or within seven miles of the same, or within the said County of *Middlesex*, shall, in the day-time, refuse the said Justices and Physician, on such visitation, admittance, at any time or times, into such house or place as aforesaid, the master or keeper of such house or place shall, for such offence, forfeit his License.

And be it further enacted by the Authority aforesaid, That the keeper of any house or place for the reception of lunaticks, not being within the said city of *London* or *Westminster*, or within seven miles of the same, or within the said County of *Middlesex*, shall, and is hereby required, to give such notice, as aforesaid, of the receipt of every such lunatick (except such pauper lunaticks as shall happen to be sent there by parish officers) to the Secretary to the Commissioners, at the College of Physicians aforesaid, within the space of fourteen days from the time of such lunatick's being received into any such house or place; and every keeper of any such licensed house or place, who shall admit, harbour, entertain, or confine, any person as a lunatick, without

having an order in writing, under the hand and seal of some Physician, Surgeon, or Apothecary, that such person is proper to be received into such house or place as a lunatick, or shall receive any lunatick into any such house or place, having such order, and shall not give notice thereof to the Secretary of the said Commissioners, within the time, and in the manner aforesaid, shall forfeit and pay the sum of One hundred pounds.

And be it further enacted, That no such License shall be granted as aforesaid, either by the said Commissioners or Justices of the Peace, as aforesaid, unless upon granting such License, the person to whom such License is granted shall enter into recognizance to the king's Majesty, his heirs and successors, in the sum of One hundred pounds, with two sufficient securities, each in the sum of Fifty pounds, or one sufficient security in the sum of One hundred pounds, under the usual conditions, for the good behaviour of such person during the time for which such License shall be granted.

And be it further enacted by the Authority aforesaid, That the Lord High Chancellor of *Great Britain*, or Lord Keeper, or the Commissioners for the Custody of the Great Seal, or the Lord Chief Justice of the Court of King's Bench, or the Lord Chief Justice of the Court of Common Pleas, for the time being, may, at any time or times, by any written order, directed to the Commissioners appointed by this Act, or to the Justices of the Peace and Physician, appointed Visitors, at any General Quarter Session, require the said Commissioners, or any three or more of them, or the said Visitors, or any two of them, to visit or inspect any house or houses so licensed; and also to make a report to him or them, touching such matters as they shall, in such orders, be directed to inquire into, or as they shall think deserving his or their Lordships notice; and the said Lord High Chancellor, or Lord Keeper, or Commissioners for the Custody of the Great Seal, or Lord Chief Justice of the Court of King's Bench, or the Lord Chief Justice of the Court of Common Pleas, may also, at any time or times, by

a like order, send for, and inspect the Register or Registers so to be kept as aforesaid; and may summon and examine all or any of the persons concerned in the execution of this Act, as often as shall be thought necessary and proper; and in case they, or any of them, shall not obey all such orders as aforesaid, within two days after the receipt of the same, and shall not shew sufficient cause to the contrary, every person, so offending, shall be deemed guilty of a contempt of the Court of Chancery, Court of King's Bench, or Court of Common Pleas, as the case may be.

Provided always, and it is hereby declared, That nothing in this Act contained shall extend, or be construed to extend, to any of the publick hospitals within this kingdom.

And whereas it is not intended by this Act to give the keepers of any house or houses, so to be licensed as aforesaid, or any other person concerned in confining any of his Majesty's subjects therein, any new justification from their being able to prove that the persons so confined have been sent there by such direction and advice as are required by this Act; be it therefore declared and enacted, That in all proceedings that shall be had under His Majesty's Writ of *Habeas Corpus*, and in all indictments, informations, and actions, that shall be preferred and brought against any person or persons, for confining or ill-treating any of His Majesty's subjects, in any of the said houses, the parties complained of shall be obliged to justify their proceedings according to the course of the common law, in the same manner as if this Act had not been made.

And be it further enacted by the Authority aforesaid, That all penalties and forfeitures which shall be incurred within the said cities of *London* or *Westminster*, or within seven miles of the same, or within the said County of *Middlesex*, for offences against this Act, shall and may be sued for and recovered in any of the Courts of Record at *Westminster*, by Action of Debt, Bill, Plaint, or Information, by the President of the said College for the time being, in the name of the Treasurer belonging to the said College, at any

time within six calendar months after the offence committed; and all such penalties and forfeitures, when recovered, shall and are hereby directed to be paid to the said Treasurer; and shall be applied (except such penalties and forfeitures as are otherwise directed to be applied by this Act) in manner following; (that is to say), one moiety of all such penalties and forfeitures shall go to the informer, and the other moiety towards defraying the expenses attending the execution of this Act: And all penalties and forfeitures which shall be incurred for offences against this Act, not within the said cities of *London* or *Westminster*, or within seven miles of the same, or within the said County of *Middlesex*, shall and may be sued for and recovered by Action of Debt, Bill, Plaint, or Information, by and in the name of the Clerk of the Peace for the County where any such offence shall be committed; and all such penalties and forfeitures, when recovered, shall be applied, one moiety to the informer, and the other moiety for defraying the expenses attending the execution of this Act, within such County.

And be it further enacted, That if any Action or Suit shall be commenced or brought against any person or persons, for any thing done in pursuance of this Act, the same shall be commenced within six calendar months next after the fact committed; and shall be laid or brought in the county, city, or place, where the cause of Action shall have arisen, and not elsewhere; and the defendant or defendants, in every such Action or Suit, shall and may, at his election, plead specially, or the general issue, Not Guilty; and give this Act, and the special matter, in evidence, at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this Act: And if the same shall appear to be so done, or that such Action or Suit shall be brought in any other county, city, or place, or shall not have been commenced within the time before limited for bringing the same; that then the jury shall find a verdict for the defendant or defendants; and, upon a verdict being so found, or if the plaintiff or plaintiffs shall be nonsuited, or discon-

tinue his, her, or their Action or Suit, after the defendant or defendants shall have appeared; or if, upon demurrer, judgment shall be given against the plaintiff or plaintiffs, then the defendant or defendants shall recover treble costs, and have such remedy for recovering the same as any defendant or defendants hath or have in any other cases by law.

And be it further enacted, That this Act shall be deemed and taken to be a Public Act; and be judicially taken notice of as such, by all Judges, Justices, and other persons whomsoever, without specially pleading the same.

And be it further enacted by the Authority aforesaid, That this Act shall continue in force for the term of Five Years, and from thence to the end of the then next Session of Parliament.

REPORT.

The Select Committee appointed to consider the validity of the doctrine of Contagion in the Plague; and to report their observations thereupon, together with the Minutes of the Evidence taken before the House: Have considered the matters to them preferred, and have agreed upon the following Report.

Your Committee being appointed to consider the validity of the received doctrines concerning the nature of contagious and infectious diseases, as distinguished from other epidemics, have proceeded to examine a number of medical gentlemen, whose practical experience or general knowledge of the subject appeared to your Committee most likely to furnish the means of acquiring the most satisfactory information. They have also had the evidence of a number of persons whose residence in infected countries, or whose

commercial or official employments enabled them to communicate information as to facts, and on the principle and efficacy of the laws of Quarantine; all the opinions of the medical men whom your Committee have examined, with the exception of two, are in favour of the received doctrine, that the Plague is a disease communicable by contact only, and different in that respect from Epidemic fever; nor do your Committee see any thing in the rest of the evidence they have collected, which would induce them to dissent from that opinion. It appears from some of the evidence, that the extension and virulence of the disorder is considerably modified by atmospheric influence; and a doubt has prevailed whether under any circumstance, the disease could be received and propagated in the climate of Great Britain. No fact whatever has been stated to show, that any instance of the disorder has occurred, or that it has ever been known to have been brought into the Lazarettos for many years: but your Committee do not think themselves warranted to infer from thence, that the disease cannot exist in England; because in the first place, a disease resembling, in most respects, the Plague, is well known to have prevailed here in many periods of our history, particularly in 1665—6: and further, it appears that in many places, and in climates of various nature, the Plague has prevailed after intervals of very considerable duration.

Your Committee would also observe, down to the year 1800, Regulations were adopted, which must have had the effect of preventing goods infected with the Plague from being shipped directly for Britain; and they abstain from giving any opinion on the nature and application of the Quarantine regulations, as not falling within the scope of enquiry to which they have been directed; but they see no reason to question the validity of the principles upon which such regulations appear to have been adopted.

14*th June*, 1819.

Chorley, M. D. *v.* Bolcot, executor.

(From 4 T. R. p. 317.)

The plaintiff, who was a physician living at *Doncaster*, brought this action for fees, for attending a considerable time on the defendant's testator, who lived at some little distance from the town; and the evidence was, that at *Doncaster* and its neighbourhood there was no certain rule about fees, but the general practice was for a physician to receive two guineas a week for his attendance. The plaintiff obtained a verdict at the last assizes at *York*; to set aside which *Wood* obtained a rule *nisi* last term, on the ground that no action lay for a physician's fees any more than for a barristers.

Cockell, Serj. and *Chambre*, now shewed cause; observing that though this point had been ruled several times at *nisi prius* against such a claim, yet it had never been solemnly decided, nor was there any authority in the books for putting the claim of a physician's fees upon the same footing as those of a barrister. In the latter case it might originally have been proper that no temptation should be held out to countenance injustice: but in the former it would be equally impolitic that those who are frequently put to expense in attending patients at a distance, and who are liable to make reparation to those who may suffer by their want of skill, should not be certain of a just and honourable reward. The regulation with regard to barristers is founded on grounds of public policy, as appears by the passage in *Tacitus*, to which Mr. J. *Blackstone* refers; but they are totally inapplicable to the case of physicians. And in that very passage in *Tacitus* it is taken for granted that the latter were entitled to a remuneration, because their situation was dissimilar to that of advocates. Besides in this case there is an additional reason why the plaintiff should recover, as there is understood to be a general stipulated

acknowledgment for a physician's attendance at the place where this transaction arose.

Lord KENYON, Ch. J. I remember a learned controversy some years ago as to what description of persons were intended by the *Medici* at *Rome*; and it seemed to have been clearly established by Dr. *Mead*, that by those were not meant physicians, but an inferior degree amongst the professors of that art, such as answer rather the description of surgeons amongst us. But at all events it has been understood in this country that the fees of a physician are honorary, and not demandable of right. And it is much more for the credit and rank of that honorable body, and perhaps for their benefit also, that they should be so considered. It never was yet heard of that it was necessary to take a receipt upon such an occasion. And I much doubt whether they themselves would not altogether disclaim such a right as would place them upon a less respectable footing in society than that which they at present hold.

Per Curiam. Rule absolute.

Lipscombe *v.* Holmes, esq.

(From Campbell.)

This was an action for work and labour as a surgeon, and for curing the defendant and several persons of his family, of divers diseases and maladies, under which they had respectively laboured and languished. The defendant pleaded the general issue, and paid 3*l* 13*s* 6*d* into court.

The first defence set up was, that the plaintiff was a physician, and therefore could not maintain an action for his fees. It appeared that he wrote prescriptions, was called "*Doctor*," and signed himself M. D.

Park said he should shew, that at the time when the visits were paid, for which the action was brought, the plaintiff was only a surgeon; and that he had not taken out his diploma as a physician till long after.

Lord *Ellenborough*.—If a person passes himself off as a physician, he must take the character *cum onere*. When he brings an action for visits paid by him as a physician, I will give him credit for being so, and tell him he must trust to the honour of his patients. Whether the plaintiff had or had not a diploma when he attended the defendant, is immaterial. Whatever he was, if he at that time wrote prescriptions and added M. D. to his name, he must be nonsuited.

Park then produced the rule for paying money into court, which his lordship thought removed the objection, and admitted the plaintiff's right to sue as a surgeon.

It was afterwards agreed to withdraw a juror.

Slater *v.* Baker and Stapleton, C. B.

(From 2 Wils. R. 359.)

Special action upon the case, wherein the plaintiff declares that the defendant *Baker* being a surgeon, and *Stapleton* an apothecary, he employed them to cure his leg which had been broken and set, and the callous of the fracture formed; that in consideration of being paid for their skill and labour, &c. they undertook and promised, &c. but the defendants not regarding their promise and undertaking, and the duty of their business and employment, so ignorantly and unskilfully treated the plaintiff, that they ignorantly and unskilfully broke and disunited the callous of the plaintiff's leg after it was set, and the callous formed, whereby he is damaged. The defendants pleaded not guilty, whereupon issue was joined, which was tried before the Lord Chief Justice *Wilmot*, and a verdict found for the plaintiff, damages £500. The substance of the evidence for the plaintiff at the trial was, first a surgeon was called, who swore that the plaintiff having broken both the bones of one of his legs, this witness set the same, that the plaintiff was

under his hands nine weeks, that in a month's time after the leg was set, he found the leg was healing and in a good way; the callous was formed, there was a little protuberance, but not more than usual; upon cross examination he said he was instructed in surgery by his father, that the callous was the uniting the bones, and that it was very dangerous to break or disunite the callous after it was formed.

John Latham an apothecary swore he attended the plaintiff nine weeks, who was then well enough to go home, that the bones were well united, that he was present with the plaintiff and defendants, and at first the defendants said the plaintiff had fallen into good hands; the second time he saw them all together the defendants said the same, but when he saw them together a third time there was some alteration, he said the plaintiff was then in a passion, and was unwilling to let the defendants do any thing to his leg; he said he had known such a thing done as disuniting the callous, but that had been only when a leg was set very crooked; but not where it was straight.

A woman called as a witness, swore that when the plaintiff came home he could walk with crutches, that the defendant *Baker* put on to the plaintiff's leg an heavy steel thing that had teeth, and would stretch or lengthen the leg, that the defendants broke the leg again, and three or four months afterwards the plaintiff was still very ill and bad of it.

The daughter of the plaintiff swore, that the defendant *Stapleton* was first sent for to take off the bandage from the plaintiff's leg; when he came he declined to do it himself, and desired the other defendant *Baker* might be called in to assist; when *Baker* came he sent for the machine that was mentioned; plaintiff offered to give *Baker* a guinea, but *Stapleton* advised him not to take it then, but said they might be paid all together when the business was done; that the third time the defendants came to the plaintiff. *Baker* took up the plaintiff's foot in both his hands and nodded to *Stapleton*, and then *Stapleton* took the plaintiff's leg upon his knee, and the leg gave a crack when the

plaintiff cried out to them and said, "you have broke what "nature had formed;" *Baker* then said to the plaintiff *You must go through the operation of extension*, and *Stapleton* said we have consulted and done for the best.

Another surgeon was called and swore, that in cases of crooked legs after they have been set, the way of making them straight is by compression and not by extension, and said he had not the least idea of the instrument spoken of for extension; he gave *Baker* a good character, as having been the first surgeon of *St. Bartholomew's* hospital for twenty years, and said he had never known a case where the callous had deossified.

Another surgeon was called who swore, that when the callous is formed to any degree, it is difficult to break it, and the callous in this case must have been formed, or it would not have given a crack, and said extension was improper, and if the patient himself had asked him to do it, he would have declined it, and if the callous had not been hard he would not have done it without the consent of the plaintiff, that compression was the proper way, and the instrument improper; he said the defendant *Baker* was eminent in his profession. Another surgeon was called who swore, that if the plaintiff was capable of bearing his foot upon the ground, he would not have disunited the callous if he had been desired by him, but in no case whatever without consent of the patient; if the callous was loose it was proper to make the extension to bring the leg into a right line. A servant of the plaintiff swore the plaintiff had put his foot upon the ground three or four weeks before this was done.

The counsel for the defendants at the trial, for *Baker*, relied upon the good character which was given him, and objected there was no evidence to affect the other defendant *Stapleton* the apothecary; but the Lord Chief Justice thought there was such evidence against both the defendants as ought to be left to the jury, as the nodding, the advising *Baker* not to take the guinea offered to him by the plaintiff,

besides the apothecary first proposed sending for *Baker;* the plaintiff was in no pain before they extended his leg, and he only sent to *Stapleton* to have the bandage taken off: the Lord Chief Justice asked the Jury whether they intended to find the damages against both the defendants, and they found £500 against them jointly, and he said he was well satisfied with the verdict.

It was now moved that the verdict ought to be set aside because the action is upon a joint contract, and there is no evidence of a joint undertaking by both defendants; the plaintiff sends for *Stapleton* to take off the bandage who declines doing it, and says, I do not understand this matter, you must send for a surgeon; accordingly *Mr. Baker* is sent for, who enters upon the business as a surgeon unconnected with *Stapleton*, who, it does not appear, ever undertook for any skill about the leg, so the jury have found him guilty without any evidence. That *Baker* has been above twenty years the first surgeon in *St. Bartholomew's* hospital, reads lectures in surgery and anatomy, and is celebrated for his knowledge in his profession as well as his humanity; and to charge such a man with ignorance and unskilfulness upon the records of this court is most dreadful; all the witnesses agreed Mr. *Baker* doth not want knowledge, therefore this verdict ought not to stand. 2dly, It was objected that the evidence given does not apply to this action, which is upon a joint contract; the evidence is that the callous of the leg was broke without the plaintiff's consent; but there is no evidence of ignorance or want of skill, and therefore the action ought to have been trespass *vi & armis* for breaking the plaintiff's leg without his consent; all the surgeons said they never do any thing of this kind without consent, and if the plaintiff should not be content with the present damages, but bring another action of trespass *vi & armis*, could this verdict be pleaded in bar? the court without hearing the counsel for the plaintiff gave judgment for him.

Curia: 1st, It is objected that this is laid to be a joint undertaking, and therefore it ought to be proved, and we

are of opinion that it ought; the question therefore is, whether there is any evidence of a joint undertaking; we are of opinion there is; Mr. *Stapleton* declines acting alone, but in concurrence with Mr. *Baker* attends the plaintiff every time any thing is done, and assists jointly with Mr. *Baker;* this appears in evidence, and is sufficient, for there is no occasion to prove an express joint contract, promise or undertaking; when an offer is made to *Baker* of a guinea, *Stapleton* says, you had better be paid all at last; they both attended plaintiff together every time, and *Stapleton* said, we have consulted and done for the best; when the plaintiff complained of what they had done, *Stapleton* considered himself as one of the persons to join in the cure of the leg, for he put his hand on the knee when *Baker* nodded, and then the bone cracked; he is the original person aiding in this matter, and there is no ground for this objection. When we consider the good character of *Baker*, we cannot well conceive why he acted in the manner he did; but many men very skilful in their profession have frequently acted out of the common way for the sake of trying experiments; several of the witnesses proved that the callous was formed, and that it was proper to remove plaintiff home; that he was free from pain and able to walk with crutches; we cannot conceive what the nature of the instrument made use of is; why did *Baker* put it on when he said that plaintiff had fallen into good hands, and when plaintiff only sent for him to take off the bandage, it seems as if Mr. *Baker* wanted to try an expedient with this new instrument.

2*dly*, It is objected that this is not the proper action, and that it ought to have been trespass *vi & armis;* in answer to this, it appears from the evidence of the surgeons that it was improper to disunite the callous without consent; this is the usage and law of surgeons; then it was ignorance and unskilfulness in that very particular, to do contrary to the rule of the profession, what no surgeon ought to have done; and indeed it is reasonable that a patient should be told what is about to be done to him, that he may take courage and put

himself in such a situation as to enable him to undergo the operation; it was objected this verdict and recovery cannot be pleaded in bar to an action of trespass *vi & armis* to be brought for the same damage; but we are clear of opinion it may be pleaded in bar. That the plaintiff ought to receive a satisfaction for the injury, seems to be admitted; but then it is said the defendants ought to have been charged as trespassers *vi & armis;* the court will not look with eagle's eyes to see whether the evidence applies exactly or not to the case, when they can see the plaintiff has obtained a verdict for such damages as he deserves, they will establish such verdict if it be possible. For any thing that appears to the court this was the first experiment made with this new instrument, and if it was, it was a rash action, and he who acts rashly acts ignorantly; and although the defendants in general may be as skilful in their respective professions as any two gentlemen in *England*, yet the court cannot help saying that in this particular case they have acted ignorantly and unskilfully, contrary to the known rule and usage of surgeons.

Judgment for the plaintiff *per totam curiam.*

Seare *against* Prentice.

From 8 *East.*

This was an action on the case brought by the plaintiff, a shoemaker, against the defendant, whom he employed as a surgeon, for negligently, ignorantly, and unskilfully reducing a dislocated elbow and fractured arm of the plaintiff, of which he had undertaken the cure. The cause was tried before *Heath* J. at the last assizes at *Hertford*; and a verdict having been given for the defendant under the direction of the learned Judge; that direction was now impeached, and a rule *nisi* for setting aside the verdict and granting a new trial was moved for by *Gurney*, upon the ground that there was evidence laid before the jury of the *unskilful* treatment

of the plaintiff by the defendant; but that they were told by the learned Judge, that unless *negligence* were proved, they could not examine into the *want of skill:* and the evidence, he now admitted, did not substantiate the charge of *negligence*, though it proved the want of skill. And he referred to *Slater* v. *Baker* (*a*), to shew that an action lay against a surgeon for ignorance and unskilfulness in his profession: and to *Bull. N. P.* 73. where the general rule is laid down, that in all cases where a damage accrues to another by the negligence, ignorance, or misbehaviour of a person in the duty of his trade or calling, an action on the case will lie: as if a farrier kill my horse by bad medicines, or refuse to shoe, or prick him in the shoeing.

The Court granted a rule *nisi.* And now, upon the Judge's Report being read, the case appeared to be this:

The plaintiff's brother-in-law proved, on his behalf, that on the 2d of *April* 1805, the defendant attended the plaintiff, who had fallen from a horse, and told the defendant that his arm was broken: the defendant said that he thought the arm, which was swollen, was not broken, and applied vinegar to it, and bound it with tape. That the plaintiff was under the defendant's care for ten weeks without being cured: he could not bend his arm or work at his trade. That he then applied to Mr. *Kingston*, another surgeon, and after some time could work, and put his arm to his head. On cross-examination the same witness proved that the defendant was first sent for at night, and came directly; that he regularly attended the plaintiff every day but one till the latter applied to Mr. *Pidcock*, another surgeon, who, about nine or ten days after the accident, attended and assisted with the defendant in setting the elbow. Mr. *Kingston*, the surgeon, then proved that in *July* 1805 the plaintiff was brought to him a cripple in his arm, one bone of which was broken obliquely below the elbow. That the plaintiff's arm was almost straight; he could not turn his wrist, and

(*a*) 2 *Wils.* 359.

had no motion in his elbow. That the witness broke the callous and set it again, and made (what the witness himself described as) a very fine cure, which was spoken of about the country. He imputed the failure of the defendant in his attempt to cure the plaintiff to *negligence and carelessness:* an apprentice boy (he said) might have known better: that the bone might have been set within five hours after the accident; though he admitted that the swelling, if much, must first be reduced, which might take a fortnight. And he recommended the plaintiff to bring an action. He also spoke to a conversation with the defendant, who considered it as a very difficult dislocation to reduce; and said that he would make a compensation to the plaintiff. The learned Judge told the jury that the gist of the action was negligence; of which direct evidence might be given; or it might be inferred by the jury, if the defendant had proceeded without any regard to the common ordinary rules of his profession, *That unskilfulness alone, without negligence, would not maintain the action.* And that he was at a loss to state to the jury what degree of skill ought to be required of a village surgeon. But that, whether or not his direction were accurate in this respect, at any rate the witness *Kingston* imputed only *negligence* and *carelessness* to the defendant and *Pidcock*, in not discovering the fracture of the bone of the arm when they reduced the dislocated elbow; which there was no doubt was properly reduced: and that considering all the circumstances of the case, he did not think that such gross negligence was imputable to the defendant as to make him liable in damages to the plaintiff. The report concluded by stating that the jury found a verdict for the defendant, much to the Judge's satisfaction; who intimated that the vaunting language of the witness *Kingston* must have diminished his credit with the jury.

Shepherd Serjt. and *Espinasse* were now to have shewn cause: but though all the Court seemed to be satisfied, as well now as when the rule was moved for, that the action

well lay for unskilfulness in the profession of a surgeon; yet upon a revision of the evidence as reported, they asked of the plaintiff's counsel what evidence there was of *want of skill* in the defendant; *Kingston*, the surgeon, only imputing to him *negligence* and *carelessness;* which the learned Judge had stated to be a ground of action, and had left to the jury for their consideration; but which the jury had negatived; as indeed the evidence well warranted them in doing.

Gurney, in support of the rule, said, that it was to be collected from the whole of *Kingston's* evidence that he imputed want of skill to the defendant; and that was shewn by the expression used by him, that an apprentice boy might have known better. That so much skill at least was required of a surgeon as to be able to tell whether or not an arm was broken, or an elbow dislocated. But it was enough that the question of want of skill was wholly withdrawn from the consideration of the jury.

Lord *Ellenborough* C. J. The surgeon who was examined specifically imputed the failure of the cure to *negligence* and *carelessness*, whatever other expression he may have used in the manner of giving his evidence, upon which the learned Judge has commented. Therefore, however we may differ from the learned Judge, as I certainly do, in thinking that an ordinary degree of skill is necessary for a surgeon who undertakes to perform surgical operations; which is proved by the case in *Wilson*, and indeed by all analogous authorities; in the same manner as it is necessary for every other man to have it in the course of his employment; as the farrier who undertakes to cure any horse must have common skill at least in his business, and that is implied in his undertaking: and although I am ready to admit that a surgeon would be liable for *crassa ignorantia*, and would be justly responsible in damages for having rashly adventured upon the exercise of a profession, without the ordinary qualification of skill, to the injury of a patient: yet the question did not arise upon the evidence in this case;

for no want of skill was imputed to the defendant: and therefore the opinion of the learned Judge upon that point does not affect the merits of the verdict upon the evidence in the cause.

The other Judges concurred; and *Grose* J. referred to 3 *Blac. Com.* (*ch.* 9. *p.* 163, 4.) as confirming the general doctrine.

Rule discharged.

APPENDIX.

PART II.

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Mich. Term. 1821, *C. B.*

Severn *v.* Olive.

Mr. Serjeant *Lens* appeared to show cause against a rule obtained in this case. The case arose out of the well-known one of Messrs. *Severn*, *King*, and Co., sugar-refiners, against some of the Insurance Companies, for losses sustained in the destruction of their extensive premises, near Whitechapel. It will be recollected, that in the two trials which arose out of that event, a great number of scientific men were examined on both sides as to the result of experiments made by them in the process of boiling sugar by means of heated oil. The verdict in both cases, as is known, was for the plaintiffs. In the bill of costs, sent in to the defendants, charge was made for the attendance of the learned chymists, who gave evidence for the plaintiffs, and also for their loss of time and trouble in making those experiments. Other charges were made for the expense of the experiments themselves. The prothonotary who taxed the costs allowed both the charges in principle, though not to the extent set down in the bill. It was in consequence of having made those allowances that a rule had been granted to show cause why he should not review his taxation of costs.

Mr. Sergeant *Lens*, in showing cause against the rule, contended that the allowance for loss of time to Dr. *Thomson* was a very natural and just one. Dr. *Thomson* was Professor of Chymistry in the University of *Glasgow*, and had been obliged to come up to *London* three times, at considerable inconvenience and expense, to give evidence in the case. He had been at great trouble in making and superintending experiments, and the prothonotary, in taking the costs, had allowed a reasonable sum for the whole. It was the same in the cases of the other scientific gentlemen who attended.

The Prothonotary here observed, that he considered the allowance for expenses and loss of time of Dr. *Thomson* and other gentlemen as very just. It was usual to allow for loss of time in such cases.

The Chief Justice said, that in certain cases allowances were made for loss of time, and the question here was, how far the present case came within the rules of those allowances. As a general principle, allowances to witnesses for loss of time could not be maintained. No doubt it was a great inconvenience, that individuals whose business required their whole time should be obliged to devote part of that time to the concerns of others without reward; but it was an inconvenience to which all were equally subject in turn; and as it was to answer the ends of public justice, it ought to be borne. As to allowance for loss of time, he considered the thing decided by the case of *Willis* v. *Peckkan* (4th *Moore*). An action had been brought in that case to recover 3*l*. for loss of time whilst giving evidence in a case. It was contended for the defendants that no such action could be maintained, except by medical men and attornies. The court was of the same opinion; but the jury, nevertheless, found a verdict for the plaintiff. In the following term a motion was made to have the verdict set aside and a nonsuit entered. The court, after hearing the arguments on both sides, decided that a nonsuit must be entered; and further held, that only medical men and attornies could

charge for loss of time, as witnesses. The matter was settled, before, in the Court of King's Bench, in the case of "*Moore* v. *Adam*." The court were therefore of opinion, that as far as this allowance for loss of time, the taxation should be reviewed.

Mr. Sergeant *Lens* then proceeded to other parts of the rule, and contended that the apportioning of the costs between the Phœnix and Imperial Insurance was the fairest mode which could be adopted, as each had two actions, though they were not all tried, and the evidence in each was the same.

The *Chief Justice* asked how much the expense of the experiments made amounted to.

The Prothonotary said that all the items were so mixed up, that it would be impossible to ascertain at that moment.

The *Chief Justice*—It is important that the charge for experiments should be known. The opinion of men of science is received as evidence, because it arises from pre-existing science; but surely, as in the present case, they ought not to acquire their knowledge at the expense of the parties against whom their evidence is to weigh.

Mr. Sergeant *Vaughan*, on the same side with Sergeant *Lens*, submitted that it could never have been intended that men should not be allowed some recompense for loss of time. It would be not only an injustice, but a cruelty in many cases, if such a principle were to be adopted. Indeed, the principle was constantly departed from, in cases where the time of individuals had been a good deal engaged. In the case of *Lopez* v. *De Tastet*, the evidence of a Spanish captain of a ship was taken, and it caused him to delay a considerable time in town, and in the taxing of the costs a round sum was very properly allowed by the prothonotary, which, no doubt, was meant not merely to cover his expenses in town, but to compensate him for the loss of time.

The *Chief Justice*.—We had a consultation, not long since, in a well-known case, and in another place, whether the profits of a voyage should not be allowed for, and as to

whether a certain sum given to a captain of a ship should be looked upon as compensation for loss of time, or in the light of a bribe.

Mr. Sergeant *Vaughan* said he knew the case to which his lordship alluded. He went on to say, that the prothonotary had not made any specific allowance for loss of time as such, but had mentioned one sum for trouble, expense, and loss of time. As to the costs of the experiments which had been made, he submitted that in a case where the subject was quite new, and as they were not made wantonly or with a view to put a party to unnecessary expense, the costs of them ought to be allowed. They were made *bona fide* for this case; the materials and apparatus were also provided with reference to the present case alone. Under such circumstances, he submitted that they ought to be allowed; and he ought to add, that their affidavits set forth, that the experiments were made in consequence of its being known that similar experiments were made on the other side.

Mr. Sergeant *Taddy* followed on the same side, and observed, that while he admitted the general principle that expenses were not allowed for loss of time, except to physicians and attornies, he could not see why scientific men, such as chymists, should not be brought under the same rule as physicians.

The *Chief Justice.*—For this reason, that to a physician loss of time is considered as loss of profit. A physician cannot visit a patient by deputy, as the patient might not have the same confidence in that person as in that physician, and this I take to be the reason why the loss of time is allowed. For reasons similar in principle the loss is also compensated in the attorney.

Mr. Justice *Park.*—Suppose a clergyman, living in Cumberland, were summoned to give evidence in a cause in London, and that being delayed here for two or three weeks, he was obliged to employ a curate to officiate in his absence, have you any case where that expense would be allowed?

The Prothonotary.—Invariably the expenses would be allowed, my Lord.

Mr. Justice *Park*.—I am glad to know it, for I was not aware how the case was.

Mr. Sergeant *Taddy* then proceeded to contend, that with respect to the cost of the experiments, as they were not made for the purposes of general science, but had reference to this case alone, they ought to be allowed. Indeed, they were made by a sort of compact with the other side. They (the defendants) themselves seemed anxious that such experiments should be made. They declared that they would make them, and they invited the plaintiffs to make them also.

The *Chief Justice*.—How much was the amount of the property insured?

Mr. Sergeant *Lens* replied that it was upwards of 70,000l.

The *Chief Justice*.—I think (whether the cost of experiments be allowed or not) it was right, in a case of such importance, that they should have been made; but I wish it could be shewn to me whether there was any compact between the parties for making them.

Mr. Sergeant *Hullock*, who appeared for the defendants, here observed that he knew of no compact of that nature.

Mr. Sergeant *Taddy*.—I do not say, my lords, that there was a positive compact; but I remember that, when the motion for a new trial was argued before your lordships, one of the arguments used in support of the motion by the defendants' counsel was, that a sufficient number of experiments had not then been made. Surely, then, it will not be contended that there was not an inducement to the plaintiffs to make those additional experiments for which they now claim to be allowed.

Mr. Justice *Burrough*.—There was no contract.

Mr. Sergeant *Taddy*.—None, my lord; but they challenged us to make the experiments. We have done so; and I submit to your lordships that the verdict being for us, we ought to charge them with the full costs.

Mr. Sergeant *Hullock*, in support of the rule, contended

that the case of *Lopez* and *de Tastet*, which had been quoted by his learned brother (*Vaughan*), was not in point, nor did it bear the interpretation which had been given to it. As to physicians, he had some doubt whether in strict law even they ought to be allowed for loss of time as such, for how was the rule of expenses to be settled? One physician whose practice was extensive, might charge fifty guineas a day, while another might be satisfied to go to Guildhall for five; so that there could be no settled rule. He thought also, though he did not at all mean it invidiously, that the plaintiffs need not have sent to the great distance they had done for witnesses, while they could have got others of equal skill nearer home. If the principle were to be admitted, a man might send to *Calcutta* for witnesses for scientific purposes, and charge the expenses of the voyage here and back. At the same time he did not mean to object to Dr. *Thomson*, who he had no doubt was an extremely clever man. The learned Sergeant then went through various items in the bill, several of which, he contended, his clients ought not to be called upon to pay. There was one item of 205*l.* for a model of the premises. Why, if, as had been suggested, they had built a model of exactly the same size as the original, they might as well charge the price of it, as 250l. for a model. There was another item of 213l. for loss of time, trouble, and expenses, in making experiments, to S. Parkes, esq. Of this the prothonotory had deducted 99l., but then it was not stated what sum was for loss of time, what for the trouble, and what for the expenses. It was the same with the charges to several other gentlemen. Now he objected to any thing being allowed for loss of time, and in that case he was satisfied the case ought to be reviewed. With respect to the costs of the experiments, he apprehended that the best answer had been given by the court. In no case that he heard of before this were they charged.

The *Chief Justice* asked what was the rule in patent cases.

The Prothonotary said that in all such cases a reasonable sum was allowed.

Mr. Sergeant *Hullock* proceeded. There was another ground on which he thought the experiments ought not to be charged. Either there had been several experiments made before the new method was adopted, or there had not. If there had, no additional experiments were necessasy on the late trials. If there had not, the plaintiffs had rashly made the risk, and ought not to recover now.

The *Chief Justice*.—You forgot, brother *Hullock*, that this was a patent.

Mr. Sergeant *Hullock*.—That, my lord, strengthens my argument, for in that case it must have been so well known, as not to need any additional experiments. The learned Sergeant was proceeding to contend that the division of the costs equally between the two insurance companies was not the most proper one; but the court thought that such an arrangement would best meet the justice of the case. There were two insurance companies in the case, in each of which two policies had been effected, and two actions commenced; and though all the actions were not tried, yet as the same evidence went to all, it was but just that each office should bear a moiety of the costs.

The arguments being closed on both sides, the *Chief Justice* asked whether physicians were allowed for loss of time as witnesses?

The Prothonotary replied, that they were always allowed.

The Court then wished to be informed, whether there was a particular scale of allowance, for it was not to be supposed that such an eminent physician as Dr. *Baillie* would be allowed according to the extent of his practice.

The prothonotary said certainly not. There was an average allowance, and by that the most eminent physician received only the same sum as the physician who had got his diploma but the day before.

The *Chief Justice*.—What sum would you allow?

The Prothonotary.—My lord, since the allowance has been raised to barristers, we have raised physicians to the same rank, and they are allowed the same—two guineas per day.

The *Chief Justice.*—But do barristers take the allowance?

The Prothonotary.—In some cases, my lord, it is allowed.

The *Chief Justice* (after consulting for a short time with the other Judges) said we shall not say any thing more upon this, than that it must be referred back to the master to revise the costs, and that the experiments are not to be allowed: nor is allowance to be made for loss of time as such; but let it be understood that physicians are to be allowed as usual.

The Prothonotary begged to know how he was to reckon physicians, was it by diploma?

The Court said by practice. It was not to be expected that a physician was to take his diploma about in his pocket.

The Prothonotary again begged to trouble their lordships. There was another class of persons who were frequently allowed much more than any professional men—he meant surveyors. Sometimes very high charges were made for them. For instance, the late Mr. *Rennie*, who was summoned as a witness in the present case: his time was of the utmost value, as was that of others of eminence in that branch of science. He wished to know how they were to be allowed.

The *Chief Justice.*—We can know no distinction here. The time of such gentlemen as the late Mr. Rennie must no doubt be extremely valuable to them, but that of a poor man is equally valuable to him, and perhaps more so; for though the amount might not be as great, yet the support of his family might be depending on it.

Rule made absolute; and it was further ordered, that a moiety of the taxed costs should be paid by each of the Insurance Offices in question.

There was another case of "*Severn* v. *Slade*," turning exactly on the same point, which was not argued, as of course the same decision will apply to it.

Two Notes on the Legal Time for Human Birth.

(From Hargrave's Jurisconsult Exercitations)

[Lord Coke, in his Commentary upon Littleton, fol. 8. a. considers, who may inherit lands or tenements; and about the close of his remarks on that head, introduces the case of a woman brought to bed of a child, so as to raise a question whether the child was by her deceased first husband or by her second husband. His words are, "If a "man hath a wife and dieth; and within a very short time "after the wife marries again, and within nine months hath "a child, so that it may be the child of the one or the other, "some have said that in this case the child may choose his "father, *quia in hoc casu filiatio non potest probari*; and "so is the book to be intended: for avoiding of which "question and other inconveniencies, this was the law be-"fore the conquest, *sit omnis vidua sine marito duodecim "mensibus, et si maritaverit perdat dotem.*" In the margin also of the same book, he thus refers to authorities, "21 E. "8. 39 Pancirollus Nova Rep. 485, &c. Opus eximium, 48. b. Lambard de priscis Anglorum Legibus, 120. 72, &c." and as to the year-book of E. 3. so cited, it shews, that the doctrine, of allowing the infant to choose which of the two husbands should be his father in the case so put, was attributed to Sir William de Bereford, who was made chief justice of the common pleas early in 2 E. 2.

So far Lord Coke only puts a special case barely involving a consideration of the legal time for a woman's going with child.

But in a subsequent part of his commentary, Lord Coke brings forward an adjudged case of 18 E. 1. which materially involved considering what was the limit to the time for a woman's parturition, and for which he refers to *Trin.* 18 *E.* 1. *Rot.* 61. *Bedford coram rege*; and so Lord Coke was led to giving his own idea of the latest legitimate time *pariendi* for women. The passages here meant to be ad-

verted to are in Co. Litt. 123. b. and are in these words: "It was found by verdict, that Henry the son of Beatrice, "which was the wife of Robert Radwell deceased, was "born *per undecim dies post ultimum tempus legitimum* "*mulieribus constitutum.* And therefore it was adjudged, "*quòd dictus Henricus dicî non debet filius prædicti Roberti* "*secundùm legem et consuetudinem Angliæ constitutus.* "Now *legitimum tempus* in that case appointed by law at "the furthest is nine months or forty weeks: but she may "be delivered before that time. Which judgment I thought "good to mention. And this agreeth with that in Esdras: "*Vade et interroga prægnantem si quando impleverit novem* "*menses suos, adhuc poterit matrix ejus retinere partum in* "*semetipsâ? et dixi non potest, Domine.*" In the margin of the last passage of this extract from Co. Litt. 123. b. there is a reference to 4 Esdras 4. 41. and Panciroll. Nova Reporta, pag. 485, &c.

These two extracts from Co. Litt. 8. a. and 123. b. are here given as an introduction to the following article, which consists of two notes by the author in the first part of the 13th edition of the Coke upon Littleton, being the author's part of that edition, and the first attempt at editing that ever to be valued work with notes.—Both the notes are on the second of the two preceding extracts from the Coke upon Littleton.—The first of the two notes chiefly relates, to the special case of a widow's marrying a second husband, and being delivered of a child so soon after the death of her first husband, as to raise a doubt, which of the two husbands should be considered as the father: and so far such note applies as well to the case so put in Co. Litt. 8. a. from the year-book of 21 E. 3. 39. as to the case in 18 E. 1. so stated in Co. Litt. 123. b. from the king's bench record of that year.—The second of the two notes relates to the general point as to the ultimate legitimate time for a woman's parturition.

Further as to the following article, it is proper to apprize the reader, that, exclusively of what is now added by

note at the bottom of the page, it was first published about 30 years ago.]

TWO NOTES, &c.

I. *Note as to Lord Coke's cited Legitimacy Case of Radwell, in* 18 *E.* 1.

Lord Hale, in a manuscript note about legitimacy in Co. Litt. fol. 8. a. gives a fuller extract of this case of 18. E. 1. from the record than is here expressed. His words are these.

" Trin. 18 E. 1. Coram rege, rot. 13. Bedford, et M. 22, " 23 E. 1. rot. 2. *In assise by John Radwell against Henry " son of Beatrice, who was wife of Robert Radwell,* quia com- " pertum est, quòd dictus Henricus fuit natus per 11 dies " post 40 septimanas, quod tempus est usitatum mulieribus " pariendi, ex quo prædictus Robertus non habuit accessum " ad prædictam Beatricem per unum mensem ante mortem " suam, præsumitur dictum Henricum esse bastardum, ideo " *judgment for the plaintiff.*"

If this state of the case is correct, Lord Coke's is erroneous in several particulars of consequence.—1. He is short in not expressing, that the record mentions *forty weeks*, and so leaving it to be deemed an *inference* of his own, as which it hath been accordingly treated.—2. He exceeds the record, by representing it to stile *that time* the *latest* for a woman's going with child, when the record only calls it the *usual* period.—3. He wholly omits the husband's having had *no access to his wife for one month before his death*; a fact very material, it being very easy to allow *eleven days* after the *usual* time, but requiring a strong case to warrant extending such liberality to nearly *six weeks*.—4. The word *præsumitur*, which Lord Coke passes over, is of importance; for it indicates, that, notwithstanding the great excess of time, it was conceived to create only a *presumption* for the bastardy, and consequently, if very cogent circumstances to

account for the protraction of the birth, and in favour of the wife's chastity, had occurred, the judgment might have been for the legitimacy.

So far we had advanced, when on looking into Rolle's Abridgment, 536. we found the same ancient case of Radwell more at large, than either in Lord Coke or Lord Hale.

But Rolle agrees with Lord Coke, as well in respect to the record's not mentioning the *forty weeks*, as to its stating the birth to be eleven days after the *latest time in law for a woman's going with child*; and as from Rolle's particularity he seems to have most minutely attended to the record, his authority, till the whole record appears, seems most decisive.

However the two last particulars, in which Lord Coke differs from Lord Hale, still remain, to which Rolle adds these further circumstances: namely,—that the *husband languished of a fever a long time before his death*;—that on the taking of an inquisition afterwards in the court of a lord, of whom he held lands by knight's service, *the wife swore she was not pregnant*, and to prove it uncovered herself in open court;—and that, in consequence of all this, the lord received a *collateral* relation as heir. The words describing the wife's exposure of her person are remarkable; for the record states, that she, being interrogated, *juramento asserebat, se non esse prægnantem; et, ut hoc omnibus manifestè liqueret, vestes suas ad tunicam exuebat, et in plenâ curiâ sic se videri permisit.* 1 Ro. Abr. 356. pl. 3. and 18 E. 1. rot. 13. in B. R. there cited. It reflects great discredit, on the lord's court, which permitted such a gross indecency; and still more on the king's judges, who suffered it to be recorded as one of the grounds for a verdict before them. How laudably contrariant is the proceeding on the writ *de ventre inspiciendo?* This remedy for the heir against the pretence of pregnancy, so well known to be of earlier date than the reign of Edward the first, as it was framed in the times of Bracton, Britton, and Fleta, delicately requires the widow to be inspected by a jury *of her own sex*; and though in subsequent times the sheriff was ordered to sum-

mon a jury composed both of men and women, yet still the *search* was to be made by the latter only. Bract. 69. a. Brlt. 165. b. Flet. lib 1. c. 15. Reg. Br. Orig. 227. a. What harsh ideas of the times might we be led to adopt, if the early introduction of the writ *de ventre inspiciendo* did not demonstrate, that the unseemly record we are observing upon was a *singularity*, and so many other testimonies of a more advanced refinement in judicial proceedings did not concur to rescue the age of our English Justinian from the suspicion of a *general practice* of such barbarism!

Let us then suppose the record to be as it is in Rolle; which is the more probable to be the truth, because a contemporary judge, who reports its having been *produced* on a trial of legitimancy, represents it much in the same way. Cro. Jam. 541. But still it will not warrant Lord Coke's inferring from it, that *forty weeks* constitute the latest time the law allows for a woman's going with child. On the contrary, no particular time being mentioned, what period was meant, must be found out through some other *medium;* and as the record states *other* unfavourable circumstances besides the excess of time, and that the *jury presumed* against the child's being the issue of the deceased husband, it seems fair to suppose, that the law was understood, not to be so strict in the time alluded to, whatever that time might be, as indiscriminately to condemn as illegitimate all children not born within it, but rather to consider every excess, unless very extraordinary indeed, as only raising a presumption against them. This construction is clearly most consistent with the terms of the record in question. In the next note we shall attempt to satisfy the reader, that the rule resulting from it is most conformable to other precedents and authorites, as well as to the reason of the thing.

After the case of Radwell from the Record of E. 1. Lord Hale thus gives the four following cases.

"Rot. Parl. 9 E. 2. M. 4. Gilbert de Clare comes Glouc. "obiit 30 Junii 7 E. 2. In parliamento tent. quindena

" Hil. 9 E. 2. *the sisters and coheirs pray livery. Matilda,* " quæ fuit uxor comitis, *pretends to be big by the earl,* " *which was accordingly found* per inquisitionem. *The co-* " *heirs reply, that,* si comitissa prægnans esset, tantum tem- " pus elapsum est, ut secundùm cursum pariendi non potest " dici imprægnari a comite. *Yet they could not obtain* " *livery till* Pasch. 10 E. 2. *but the question hung in delibe-* " *ration.*

" Note 18 R. 2. *where a woman in such a case immedi-* " *ately after the death of the first husband took a second hus-* " *band, and had issue born forty weeks and eleven days after* " *the death of the first husband, and it was held to be the* " *issue of the second husband.*

" M. 17. Jac. B.R. *Alsop and Stacey. Andrews dies of* " *the plague. His wife, who was a lewd woman, is deli-* " *vered of a child forty weeks and ten days after the death* " *of the husband. Yet the child was adjudged legitimate* " *and heir to Andrews; for* partus potest protrahi *ten* " *days* ex accidente.

" M. 4. Car. in Cur. Ward, *and afterwards* P. 5. Car. B.R. " *Thecar marries a lewd woman; but she doth not cohabit* " *with him, and is suspected of incontinency with Duncomb:* " *Thecar dies: Duncomb within three weeks after the* " *death of Thecar, marries her: two hundred and eighty-* " *one days and sixteen hours after his death she is delivered* " *of a son. Here it was agreed,* 1. *If she had not married* " *Duncomb, without question the issue should not be a bas-* " *tard, but should be adjudged the son of Thecar.* 2. *No* " *averment shall be received that Thecar did not cohabit* " *with the wife.* 3. *Though it is possible, that the son might* " *be begotten after the husband's death, yet, being a question* " *of fact, it was tried by a jury, and the son was found to* " *be the issue of Thecar.*"

Lord Hale's case of E. 2. appears very extraordinary, the time from 30 June from 7 E. 2. when the Earl of Gloucester died, to the *quindene* of Hilary, or 29 Jan. 9 E. 2, when the livery to his sister was further postponed in parliament,

being *within one day of a year and seven months*; which is a much later date for the delivery of a live child, than the most liberal in their calculations have hitherto assigned. However, on reading the printed copy of the original record, in the rolls of parliament lately published, we find Lord Hale's note quite accurate. See Rot. Parl. v. 1. p. 353. —As to the case of R. 2. it confirms the doubt we have elsewhere stated of the opinion, that, if a widow marries again and has a child within nine months after the death of the first husband, the child may choose his father; and is an authority for deciding according to the proof of the woman's condition when her first husband died. Ante fo. 8. a. note 7. Terms of the Law, first edit. tit. *Bastard*, and Cowel Inst. lib. 1. t. 9.—Lord Hale's two other cases are reported in several books, Alsop and Stacey being in Cro. Jam. 541. Godb. 281. Palm. 9. 1 Ro. Abr. 356. and Thecar's in Cro. Jam. 685. Winch. 71. Litt. Rep. 177. (*a*)

II. *Note on Lord Coke's Doctrine as to the latest time with Women for Parturition.*

If our law was really as strict in point of time as is here represented by Lord Coke, it would not sufficiently conform to the course of nature. The physicians, it is true, generally call *nine* months, each being of thirty days, the *usual* period for a woman's going with child. But then they allow, that,

(*a*) In the close of the first book of *Paulus Zacchias's famous Quæstiones Medicolegales*, there is a full discussion of the point of filiation, as between two husbands, where a woman soon after the death of her first husband marries a second. The question is raised in these words. "*Filius muli-*"*eris, quæ illico ab obitu conjugis alteri nupsit, et novem decemve mensium spatio* "*peperit; cujusdam præsumi debeat.*" See Paul. Zacch. lib. 1. tit. 5 *quæstio ultima*. The same point is investigated in the learned treatise by Alphonsus a Caranza, De Partu Naturali et Legitimo. See cap. 26. s. 71. The first book of Paulus Zacchias, who was a physician at Rome, first came out in 1621. The tract by Alphonsus a Caranza was first published about five years afterwards.

as a delivery may be accelerated by various accidental and other causes, so it is frequently protracted, not only for *ten days* beyond the nine months, but to the end of the *tenth* month, and sometimes for a considerably longer time. See Zach. Quæst. Medico-legal. lib. 1. tit. 2. Justice therefore requires, that, in the case of posthumous children, an excess of the usual time should not operate further, than by raising a proportional *presumption* against the legitimacy.

The Roman law was very liberal in this respect; for the *decemviri* allowed, that a child may be born in the *tenth* month; and though a law of the digest excludes the eleventh, yet the emperor Adrian, after consulting with the philosophers and physicians, decreed even for this, where the mother was of good and chaste manners. See Dig. 1. 4. 12. Paul. Sentent. lib. 4. t. 9. s. 5. Nov. 39, c. 2. t. 17. with Gothofred's learned notes on those two texts of the Roman law. Cod. lib. 6. t. 29. leg. 2. Aul. Gell. lib. 3. cap. 16. Huber. Prælect. in Dig. lib. 1. tit. 6.

A like liberal discretion probably prevails in most countries in Europe; for an instance of which, we refer to a very respectable foreign lawyer, who reports a decision by a *majority* of judges in the supreme court of Friesland, by which a child was admitted to the succession, though not born till three hundred and thirty-three days from the day of the husband's death, (*a*) which period wants only three days of *twelve lunar* months. Sand. Decis. Fris. lib. 4. tit. 8. Definit. 10.

(*a*) The book here cited is a collection of adjudications in the supreme court of Friesland. The author was *Johannes a Sande*, who was himself a senator of that court. An improved edition of the book came out in 1656. The particular case above cited was adjudged 27th October, 1617. What increases the latitude of the decision for the legitimacy is, that the husband was for some time a valetudinarian, and for 14 days before his death confined to his bed. The book being probably rare amongst English lawyers, and the arguments in the case comprising very ancient and curious research in a moderate compass on the *ultimum tempus pariendi* for women, the whole of Sande's report of the case will be given in a note at the end of the present article.

Nor will our own law, notwithstanding what Lord Coke advances, if the authorities are duly collected and considered, be found deficient on this interesting subject. Indeed there is a passage in Britton, which gives countenance to Lord Coke's limitation of forty weeks; for this writer excludes from the inheritance posthumous children not born within forty weeks from the husband's death. Britt. 166. a. However, even this writer seems to extend in some degree beyond the forty weeks; unless he meant to make the wife's conception exactly of equal date with the husband's death, which surely is not a very reasonable construction. But without dwelling on such a nicety, it is sufficient, that the principal of the few other authorities in our books are against so rigid a rule. Bracton is very cautious, illegitimatizing only the issue born so long after the husband's death, as to create an improbability of its being his child, without naming any fixed period. Bract. lib. 5. fo. 417. b.

As to the determined cases in our courts, the only authorities of this sort, we meet with, are enumerated in the preceding annotation; and these, duly weighed, will not be found, it is apprehended, to warrant Lord Coke's conclusion.—In Radwell's case, the finding against the issue is expressed to have been grounded merely on *presumption*; and besides, if we construe the record properly, the presumption arose from proof of the husband's non-access to the wife a month before his death.—The case of 9 E. 2. is an instance of allowing so much time beyond forty weeks, that it seems too strong to have much weight; but so far as it can claim any, it counts against Lord Coke.—The case of 18 Rich. 2. at first seems full for Lord Coke's rule, the child, though born only *eleven* days beyond the *forty weeks*, having been declared not the issue of the deceased husband. But when it is further considered, there will be found nothing to prove a *positive general* rule; for the case was very special, the widow having married a second husband the day after the death of the first, so that the question was not of legitimacy, but merely to which husband the issue be-

longed.—One of the two only remaining cases considerably extends the time beyond the forty weeks; for in *Alsop* and *Stacey*, the first of them, the issue was found legitimate, notwithstanding the lapse of forty weeks and *ten days*, and the lewd character of the wife: and even as to *Thecar's* case, which is the other of them, the issue having been born two hundred and eighty-two days, there was an excess of the forty weeks, though but a trifling one.

The precedents therefore, so far from corroborating Lord Coke's limitation of the *ultimum tempus pariendi*, do, upon the whole, rather tend to shew, that it hath been the practice in our courts, to consider forty weeks merely as the more *usual* time, and consequently not to decline exercising a discretion of allowing a longer space, where the opinion of physicians or the circumstances of the case have so required.

In the course of our inquiries into the subject of this note, we were curious to know the general sentiments of that eminent anatomist, Dr. Hunter, on three interesting questions. These were, what is the *usual* period for a woman's going with child, what is the *earliest* time for a child's being born alive, and what the *latest*. The answer, which he obligingly returned through a friend, we have liberty to publish; and it was expressed in the words following:—1. *The usual period is nine calendar months; but there is very commonly a difference of one, two, or three weeks.* 2. *A child may be born alive at any time from three months; but we see none born with powers of coming to manhood, or of being reared, before seven calendar months, or near that time. At six months it cannot be.* 3. *I have* known *a woman bear a living child, in a perfectly natural way, fourteen days later than nine calendar months, and* believe *two women to have been delivered of a child alive, in a natural way, above ten calendar months from the hour of conception.*

[What follows is an extract from Sande's *Decisiones Frisicæ*, being his report of the case, which in the preceding article is referred to as a decision by the supreme court of Friesland in 1634, for the legitimacy of a child born in the twelfth month after the husband's death. It is taken from the fourth book, title 8, definition 10.]

"*Partum à muliere, quæ non probabatur impudicè vixisse, editum duodecimo ab obitu viri mense, habitum legitimum et ad viri successionem admissum.*

"Vir aliquamdiu valetudinarius, et per quatuordecim dies ante mortem lecto affixus, ex hac vita migravit die decimo Augusti, Anno 1631, relictâ uxore, quæ nono mensis Julii die anno insequenti peperit filiam, ita ut à die obitûs viri effluxerint dies naturales tricenti et triginta tres, qui efficiunt menses solares completos undecim cum tribus diebus, vel lunares ferè duodecim, sive annum integrum lunarem ab eo momento, quo vir animam reddidit. Quæsitum, an hæc filia legitima et ad successionem istius viri admittenda sit.

"Inter Medicos et Physicos constat, quamvis hominis nascendi tempora sint varia, illa tamen ad certos limites revocari. Aristoteles enim *lib. 7. histor. animal.* ait, soli homini multiplex pariendi tempus datum: nam et septimo mense, et octavo et nono parere potest, et quod plurimum, decimo: nonnullas etiam mulieres undecimum mensem attingere. His conveniunt, quæ Plinius *lib. 7. natur. hist. cap. 5.* scribit, nonnullas etiam mulieres undecimum mensem attingere.

"Secundùm ordinarium igitur naturæ cursum, decimus mensis completus est extremus pariendi terminus. Undè Author libri Sapientiæ *cap. 7. v. 2. In utero*, inquit, *matris figuratus sum raro tempore decem mensium.* Et Plautus *in Cistelaria* refert, puellam compressam exacto decimo mense filiam peperisse. At Authores fidei digni referunt exempla mulierum, quæ undecimo, duodecimo, decimo tertio, et ulte-

riore mense, pepererunt, ut A Gellius 8. *noct. attic.* 16. Plinius *lib.* 7. *natur. histor. cap.* 5. Avicenna *lib.* 9. *de animal.* Et Albericus Gentilis *disputat.* 1. *de nascendi tempore* hæc celebris Medici Victoris Trincavelli *ex epist.* 5. verba recitat. *Auctores*, inquit, *multi et illi quidem viri omni exceptione majores, tam antiqui, quam juniores, attestantur huic sententiæ, nempe repertas esse mulieres indubitatæ probitatis et pudicitiæ, quæ fœtum in utero gesserint ad undecimum mensem et ultra.* Cujus diuturnioris gestationis caussas varias nonnulli Medici reddunt, ut videre est in consilio primo Monsbelianorum Medicorum, quod extat apud Gerard. Maynard. *lib.* 3. *decis. Tholos.* 4. Alii tamen Medici non adhibent fidem his exemplis, eaque malunt proficisci ex phantasia et imaginatione mulierum, quæ opinantur ex diversis accidentibus se ultra tempus ordinarium gestare fœtum, cum tamen res aliter se habeat, ut apparet ex concilio Medicorum secundo, quod refertur a Maynardo d. loco. Minimè igitur de hac quæstione convenit inter ipsos Medicos. Illud certum est, casus istos mulierum, quæ post decimum mensem peperisse dicuntur, si veri sunt, esse nihilominus raros et extraordinarios, idcirco eorum non haberi rationem à Legislatoribus, qui contemnunt quæ semel bis aut perraro accidunt, et ad ea jus aptant, quæ frequenter et facilè eveniunt *l. nam ad ea* 5. *et l. seq. ff. de legib. l. ea quæ raro* 64 *ff. de reg. jur.* et idcirco legitimum et extremum pariendi terminum constituunt decimum mensem completum. Quod jus primum proditum est lege 12 Tabularum ubi Decemviri ita ajunt, *Ut si qua mulier post viri mortem in decem mensibus proximis pareret, qui quævè ex ea nasceretur, suus suavè in viri familia heres esset.* Et Testatores dicere solebant. *Si filius et filia intra decem mensium spacium, post mortem meam editi fuerint, heredes sunto l. ult. C. de postum. hered. instit. l. ult. ff. de fideicommiss. libert. l. Gallus* 29. *in pr. ff. de liber. et postum.* Ac Ulpianus ut de jure certo *in l.* 3. § *penult. ff. de suis et legit. hered.* respondit his verbis, *post decem menses mortis natus non admittetur ad legitimam successionem.* Augustinus *lib.* 1. *quæst. Evan-*

gelic. ita ait. Quod " dicuntur decem menses pregnantis, novem sunt pleni, sed initium decimi pro toto accipitur. Hos decem menses ex instituto Græcorum, a quibus Decemviri leges suas acceperunt, non solares, sed lunares fuisse probat Fr. Hotomannus *lib.* 9. *obs.* 9. Nec Ulpiano obloquitur Justinianus in *Novell.* 39. dum negat sub finem undecimi mensis vel perfecto undecimo natum esse legitimum: nam indè à contrario sensu ad correctionem Ulpianei responsi malè inferretur natum initio undecimi mensis esse legitimum ut animadvertit etiam Albericus Gentilis *d. Disp.* 1. Sanè in Dicastetrio Wittenbergensi anno 1567. partum pronuntiatum fuisse legitimum, quam mulier, quæ honestè vixerat, post obitum mariti pepererat in initio undecimi mensis, referunt Ioachimus à Beust in tract. de matrimonio *cap.* 36. *in fin. et ad. l.* 3. *ff. de jurejur. num.* 36. ac Andreas Rauchbaert, *part.* 1. *quæst.* 24. *num.* 53. Unde Conradus Riddershusius *in comm. ad Novell. Const. part.* 4. *cap.* 13. a Justinianeo jure moribus recessum existimat. Quod non est admittendum. Illud notatu dignum, quod ex Theodoro Zuingero Medico refert Hotomannus *d. obs.* 9. mulieres nempe dum dimidiatum mensem pro integro computant, sæpe opinari, se undecim menses uterum gestare, cum tamen septem tantum quadragenas dies scilicet 280. compleverint. Jure igitur nostro partus habetur legitimus, qui intra et non post decem menses à morte viri editus est. Confer Iacobum Cujacium *ad d. Novell.* 39. *in tract. de præscript. cap.* 19. *et lib.* 4 *recept. sent. Iulii Pauli cap.* 9. § 5. Andream Tiraquellum *in repetit. l. si unquam* 8. *in verb. Suscepit liberos C. de revocand. donat.* Iacobum Menochium *lib.* 2. *de arbit. judic. cas.* 89. *num.* 47. 48. *&* 52. Ioachimum Mynsing. *cent.* 6. *obs.* 4. Franciscum Hotomannum *lib.* 9. *obs.* 9. Gerardum Maynard. *lib.* 4. *decis. Tholos.* 3. 4. Iacobum Concennatium, *lib.* 2. *quæst. jur. cap.* 9. Casus illos raros et extraordinarios ad facti quæstionem, id est, ad Indicis, ut noni viri arbitrium, redigendos esse dicit Hotomannus *d. obs.* 9. *in fin.* Et hanc inter ordinarios et extraordinarios partus differentiam esse ait Gentilis, quòd illi justi habeantur, nisi pro-

bentur injusti, hi injusti censeantur, donec justi fuerint approbati.

" In hac specie partitæ erant Iudicum sententiæ. Quidam enim censebant juris definitioni hic esset insistendum, cum partus editus sit mense duodecimo ferè completo, si menses hic accipiamus lunares, et vir ante obitum quatuordecim dies graviter decubuerit, ideoque credibile non fuerit eum de vene exercenda cogitasse. Alii (qui numero vincebant) judicabant partum legitimum, quòd mulier esset probatis moribus ac pudicitiâ minimè suspectâ, quòd etiam ex marito quantumvis ægroto concipere potuerit, tardiorisque partus caussam ex Hippocratis sententia esse potuisse, quod viri infirmi semen fuerit humidius et excrementosius eoque minus concoctum. Senatus tamen expedire censuit, ut partes ad transigendum monerentur. Transactione autem non succedente, partus frequentioribus suffragiis declaratus fuit legitimus, et patri heres. *(a)*."

(a) 27. *Octobris. Anno* 1634.

The learned author of these notes, Francis Hargrave, one of the King's Counsel, died while our work was at press: the profession have lost a most profound and erudite lawyer; the learned, an elegant scholar; and his friends, a man whose amenity of manner and kindness of heart surpassed the ordinary bounds of human benevolence.

APPENDIX.

PART III.

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The determination of the College concerning the Questions proposed to them by the King's Majestie about the death of *Joseph Lane*.

The College of Physicians in London being lawfully assembled by the command of their Sovereign Lord the King, about certain questions proposed concerning the death of *Joseph Lane*, reported to be killed by poison, and having made a diligent search, and well considering all circumstances relating; 1. As to the state of the body of the foresaid Lane; 2. As to the disease which (by a long series of violent symptoms) brought him to his end; 3. As to the kind and appearance of his death; 4. As to the observations made upon his dead body by the Physicians and Chirurgeons present; 5. As to the conjectures taken from the strict examination of a *bolus* extremely suspicious, whose parts were artificially separated, found in Mr. *Lane*'s house when dead, and after brought into Court before the Judges, and from thence to the Physicians at their College: To whom (by the command and in the name of the King) Letters were wrote from the Right honourable Sir John Cooke principal Secretary of State that they might diligently enquire and give a faithful account to the following Questions, 1 Concerning Lane's death, whether it was procured from Poison? 2 Their opinion about a purging potion carried the 4th of

April, 1632 from Mr. *Mathews* an Apothecary's shop to *Lane's* House; and taken by Lane the 6th, whether it had any thing of poison in it? The College after very mature deliberation, did humbly present the following Decree to his sacred Majesty as a testimony of their obedience.

1 That the said *Joseph Lane* did certainly dye of a violent death. 2 That he had taken poison, and that corrosive. 3 That they could determine nothing concerning the Potion sent and given by Mr. *Mathews* the Apothecary to Mr. *Lane* without the advice of any Physician, because many of their Medicines were too negligently prepared by their Servants; But if this potion did only consist of those ingredients which he had given an account of, and for which we have solely his word, then there was nothing of poison contained therein. 4. In the remainder of the aforesaid *Bolus* there was found Mercury Sublimate, not sweet, but the most harsh and highly caustick, which was separated from the rest of the *Bolus* and shown to the whole College; In testimony whereof the College by the unanimous Consent of the President and Fellows and all present at this consultation, signed this Decree with their own hands, and sealed it with the College Seal, that it might appear more authentick.

And because that from the beginning of the world to this very day good and wholesome Laws have derived their original from evil manners, the whole College of Physicians doe most humbly beseach your most sacred Majesty that as the Father of your Country, you would consult the health and welfare both of your City Subjects and would by your Royal Proclamation strictly command that for the future, No Grocer, Drugster, Apothecary, Chymist, or any other person presume to sell Arsenick, Quicksilver, Sublimate, Precipitate, Opium, Coloquintida, Scammony, Hellebore, or other Druggs either poisonous or dangerous, to poor sorry Women or poor people (which hath been too common) but only to those who are willing to give their names; that if there should be occasion they may give an account of the reason of their buying these dangerous medicines.

May it likewise please your Majesty to issue out your Royal Edict under the most severe penalties, that no Apothecary for the future shall dare to compound for the Well, or administer to the Sick any medicines, especially Vomits, Purges, Opiates, Mercurial or Antimonial remedies without the prescription of Physicians then living; which prescription they shall be bound to produce upon the command or request of the Censors of the College. He that shall act contrary, shall be punished by the Law as a publick enemy to the life of man Dated from the College of Physicians in London the Last day of May 1632 And subscribed

Dr. Argent President
(and seventeen others)

(See Goodall's Proceedings)

Case of Standsfield.

Edinburgh Dec^{r} 1. 1687.

We under Subscribers, James Craufurd and James Muirhead, Chirurgeons in Edinburgh, having order from Sir John Dalrymple his Majesty's Advocate, to go to Morum and there to take up the Corps of Sir James Standsfield, and to sight and view the same exactly, and if need were, to open up the body, and to consider whether there appeared any evidence of wounds, bruises, or strangling upon the Corps, besides what might have happened by his falling or drowning in the water, &c. In obedience thereto, we caused take up the said corps in the presence of "(here follow the names)" indwellers in New Milns, and some others. Having with all possible exactness viewed the corps we observed the face a little swelled, and inclining to a dark reddish colour, some fulness of some capillarie veins in the pallet of the mouth towards the uvula, as also a large and conspicuous swelling, about three inches broad, of a dark red or blue colour, from one side of the larinx round backwards to the other side thereof; we observed the jugular veins on both sides the neck very large and distended and

full of blood; there was a large swelling under and betwixt the chin and the cartilago scutiformis; there was also a little scratch below the left mandibula, which had rankled the cuticula, and made some little impression on the cutis: Having made incission from the chin down about the larinx, and cross upon the swelling of the neck, we found a greater laxness and distance (as we think) than ordinary betwixt the cartilago scutiformis and os hyoides; we found the tumour on the neck, containing bruised, like dark or blackish blood; the jugulars, when cut, bled inconsiderably especially that on the left side.

Having opened his breast we found the lungs distended to the filling up their capacities, but free of water: his stomach, liver &c. were all in good condition; we found no water at all; the breast, belly, privy parts, &c. were all well coloured, there was no swelling in his belly, nor any thing by ordinary to be seen on his head. This we attest and subscribe with our hands.

James Craufurd
James Murehead

Report of the Chirurgeons of Edinburgh on the same case.

We under subscribers, Chirurgeons of Edinburgh, having fully considered the report made by James Craufurd and James Murehead concerning the condition of the corps of Sir James Standsfield, and though it be not usual to declare more than matter of fact, yet in obedience to your Lordships commands, where ye desire to be informed, if these symptoms found upon the body, do import drowning or strangling; we humbly offer opinion, so far as our art or experience will allow. And whereas the report informs us, that there was found a swelling and preternatural redness in the face, a large conspicuous tumour, about three inches broad, of a dark red, or black colour, from the one side of the larynx round backwards to the other side thereof, a large swelling betwixt the chin and the cartilago scutiformis,

the jugular veins on both sides very much distended; and when incision was made downwards between the os hyoid and larinx was observed a laxness, and distance between the os hyoid and the cartilago scutiformis, incision was made cross alongst the tumour it was found full of bruised blood; the jugulars likewise, when opened, yielded a considerable quantity of blood, especially on the left side, no smell or corruption appearing in any part of the body. It is very probable these parts have suffered some external violence, which hath made them appear so far different from their natnral figure and colour, and could not be caused by drowning simply. As to the other part of the report, the breast and belly being opened, the lungs found distended, the bronchi full of air, without any water, nor any water found in the stomach or intestines, a body when drowned being generally found to have much water in it with other circumstances of the report considered, gives just ground to think he was not drowned. This we subscribe at Edinburgh the 3d day of Feb^{y} 1687

John Ballie, Deacon,	Wil Borthwick
George Stirling	Thomas Edgar
James Craufurd	James Murehead

The Report of the College of Physicians,

Edinburgh February 6: 1687

The College of Physicians being assembled at the desire of his Majesty's Advocat, to consider a report made by some Chirurgeons, concerning the body of the late Sir James Standsfield, and to give their opinion, whether by the said report, there is any just ground to believe that the said Sir James Standsfield was strangled or drowned? And they have accordingly considered the said report. They are of opinion, supposing the verity of the said report or declara-

tion that there is sufficient ground to believe, that the said Sir James Standsfield was strangled, and not drowned. In testimony whereof these presents are subscribed by

Sir Andrew Balfour, Pesident of the said College.

A. Balfour PCRM

(From Howell's State Trials).

Extract from Medical Evidence in the Case of *Spencer Cowper*, Esq. for the murder of *Sarah Stout*.

(13 Howell's State Trials)

Page 1126. Mr. *Coatsworth* a Surgeon sworn

My Lord in April last I was sent for by Dr. *Philips* to come to Hertford to see the body of Mrs. *Stout* opened, who had been six weeks buried; and he told me that there was a suspicion she was murdered, and that her relations were willing to have her taken up and opened. I came down I think on the 27th of April, and lay at Mrs. *Stout*'s house that night; and by her discourse I understood she wanted to be satisfied, whether her daughter was with child? I told her, it was my opinion we should find the parts contained in the abdomen so rotten, that it would be impossible to discover the uterus from the other parts; however, if she would have her opened, I could not discover whether she was with child, unless the infant was become bony. Her face and neck, to her shoulders, appeared black, and so much corrupted that we were unwilling to proceed any further: but, however, her mother would have it done, and so we did open her; and as soon as she was opened, we perceived the stomach and guts were as full of wind as if they had been blown with a pair of bellows; we put her guts aside, and came to the uterus, and Dr. *Philips* shewed it us in his hand, and afterwards cut it out and laid it on

the table, and opened it, and we saw into the cavity of it, and if there had been any thing there as minute as a hair, we might have seen it, but it was perfectly free and empty; after that we put the intestines into their places; and we bid him open the stomach, and it was opened with an incision knife, and it sunk flat, and let out wind, but no water; afterwards we opened the breast and lobes of the lungs, and there was no water; then we looked on each side and took up the lobes of the lungs too, to see if there was no water in the diaphragam, and there was none, but all dry. Then I remember I said, this woman could not be drowned, for if she had taken in water, the water must have rotted all the guts: that was the construction I made of it then; but for any marks about her head and neck, it was impossible for us to discover it, because they were so rotten.

Edward Clement (a seaman) sworn. In the year 89 or 90, in Beachy fight, I saw several thrown over-board during the engagement, but one particularly I took notice of, that was my friend, and killed by my side; I saw him swim for a considerable distance from the ship; and a ship coming under our stern, caused me to lose sight of him, but I saw several dead bodies floating at the same time; likewise in another engagement, where a man had both his legs shot off, and died instantly, they threw over his legs; though they sunk I saw his body float: likewise I have seen several men who have died natural deaths at sea, they have when they have been dead, had a considerable weight of ballast and shot made fast to them, and so were thrown overboard; because we hold it for a general rule, that all men swim if they be dead before they come into the water; and on the contrary, I have seen men when they have been drowned, that they have sunk as soon as their breath was out of their bodies, and I could see no more of them. For instance, a man fell out of the Cornwall, and sunk down to rights, and seven days afterwards we weighed anchor, and he was brought up grasping his arm about the cable: and we have observed in several cases, that where men fall overboard,

as soon as their breath is out of their bodies they sink downright; and on the contrary, where a dead body is thrown over-board without weight, it will swim. * * * Men (that are killed) float with their heads just down, and the small of their backs and buttocks upwards, * * * why should government be at that vast charge to allow threescore or fourscore weight of iron to sink any man, but only that their swimming about should not be a discouragement to others.

Robert Dew sworn— * * * (Question by the Prisoner) After she was taken out, did you observe any froth or foam come from her mouth or nose? *Dew*—There was a white froth came from her, and as they wiped it away, it was on again presently.

——— *Young*—(another witness to a similar question)— * * And when they had taken her up (out of the water) they laid her down upon a green place, and after she was laid down a great quantity of froth, like the froth of new beer, worked out of her nostrils. * * * It rose up in bladders, and ran down on the sides of her face, and so rose again.

Dr. *Sloane* sworn— * * As to my opinion of drowning it is plain, that if a great quantity of water be swallowed into the stomach by the gullet, it will not suffocate or drown the person: Drunkards who swallow a great deal of liquor, and those who are forced by the civil law to drink a great quantity of water, which in giving the question (as it is called) is poured into them by way of torture to make them confess crimes, have no suffocation or drowning happen to them: But on the other hand, when any quantity comes into the wind-pipe, so as it does hinder or intercept inspiration, or coming in of the air, which is necessary for inspiration or breathing, the person is suffocated. Such a small quantity will do, as sometimes in prescriptions, when people have been very weak, or forced to take medicines, I have observed some spoonfuls in that condition (if it went the wrong way) to have choaked or suffocated the person. I take drowning in a great measure to be thus, and when one

struggles he may, to save himself from being choaked, swallow some quantity of water, yet that is not the cause of his death, but that which goes into the wind-pipe and lungs. Whether a person comes dead or alive into the water, I believe some quantity will go into the wind-pipe; and I believe without force after death, little will get into the stomach, because that it should, swallowing is necessary, which after death cannot be done. * * *

Baron *Hatsell.* But what do you say to this? if there had been water in the body, would it not have putrified the parts after it had lain six weeks.

Dr. *Sloane.* My Lord, I am apt to think it would have putrified the stomach less than the lungs, because the stomach is a part of the body that is contrived by nature partly to receive liquids; but the contrivance of the lungs is only for the receiving of air; they being of a spongy nature, the water might sink more into them than the stomach; but I believe it might putrify there too after some time. I am apt to think, that when a body is buried under ground, according to the depth of the grave, and difference of the weather and soil, the fermentation may be greater or lesser, and that according to the several kinds of meats or liquids in the stomach, the putrifaction will likewise vary so that it seems to me to be very uncertain.

Baron *Hatsell.* But when they are in a coffin, how is it then?

Dr. *Sloane.* No doubt there will be a fermentation more or less, according as the air comes more or less to the body. Indeed it may be otherwise where the air is wholly shut out, which is supposed to be the way of embalming, or preserving of dead bodies of late, without the use of any spices, which is thought in a great measure to be brought about by the closeness of the coffin, and hindering of the air from coming into the body.

Question (by the Prisoner). Is it possible, in your judgment, for any water to pass into the thorax?

Dr. *Sloane.* I believe it is hardly possible, that any should

go from the wind-pipe into the cavity of the thorax, without great violence and force; for there is a membrane that covers the outside of the lungs, that will hinder the water from passing through it into any part without them.

Dr. *Garth* sworn.—* * * All dead bodies (I believe) fall to the bottom, unless they be prevented by some extraordinary tumour. * * * I believe when she threw *herself* in, she might not struggle to save herself, and by consequence not sup up much water. Now there is no direct passage into the stomach but by the gullet, which is contracted or pursed up by a muscle in nature of a sphincter: for if this passage was always open like that of the wind-pipe, the weight of the air would force itself into the stomach, and we should be sensible of the greatest inconveniences. * * * My Lord, I think we have reason to suspect the Seaman's evidence; for he saith that threescore pound of iron is allowed to sink dead bodies, whereas six or seven pounds would do as well; * * the design of tying weights to their bodies, is to prevent their floating at all, which otherwise would happen in some few days. (*a*)

Dr. *Morley*, the next witness, related some experiments on animals.

Dr. *Wollaston*, sworn.— * * I saw two men that were drowned out of the same boat. They were taken up the next day after they were drowned; one of them was indeed prodigiously swelled, so much that his clothes were burst in several places of his sides and arms, and his stockings in the seams * * the other was not the least swelled in any part nor discolored; he was as lank, I believe, as ever he was in his lifetime, and there was not the least sign of any water in him, except the watery froth at his mouth and nostrils. (*b*)

Mr. *W. Cooper*, sworn.—* * Dead bodies necessarily sink in water, if no distention of their parts buoy them up;

(*a*) See the case of *Carrascola*, the Neapolitan Admiral.

(*b*) For a curious argument on this case see one of the subsequent pamphlets in Howell.

this distention sometimes happens before death, at other times soon after, and in bodies that are drowned after they lie under water.

Dr. *Crell*, sworn.—My Lord, it must be reading, as well as a man's own experience, that will make any one a Physician: for without the reading of books in that art, the art itself cannot be attained to: besides, my Lord, I humbly conceive, that in such a difficult case as this, we ought to have a great deference for the reports and opinions of learned men: neither do I see any reason why I should not quote the fathers of my profession in this case, as well as you gentlemen of the long robe quote *Coke* upon *Littleton* in others. * * I shall only insist on what *Ambrose Pare* relates in his Chapter of Renunciations. * *

Mr. *Harriot* (a Naval Surgeon) sworn.—* * When we threw men overboard that were killed, some of them swam and some sunk * * (when a dead body is thrown overboard) I always observed that it did sink. * *

Mr. *Bartlet* (a Naval Surgeon), sworn.—* * I never saw any bodies float, either of the men that were killed in our ship, or in the ships that have been near us; I have not seen a body on the surface of the water.

We have merely made comparatively short extracts from this trial, as more copious quotations, both of the evidence, and pamphlets subsequently published, would have occupied too great a space. The whole will be found in *Howell's State Trials*, and is well worthy of the attention of the Medical or Legal reader.

Extracts from the Evidence of Doctor Anthony Addington, on the trial of *Mary Blandy* at Oxford 1752, for the Murder of her Father by Arsenic.

Dr. Anthony Addington & Dr. William Lewis sworn.

Counsel. Did you, Dr. Addington, attend Mr. Blandy in his last illness?

Dr. Addington. Yes, Sir.

C. When was you called to him the first time?

Dr. A. On Saturday evening August the 10th.

C. In what condition did you find him?

Dr. A. He was in bed; and told me, that after drinking some gruel on Monday night, August the 5th, he had perceived an extraordinary grittiness in his mouth, attended with a very painful burning and pricking in his tongue, throat, stomach, and bowels, and with sickness and gripings; which symptoms had been relieved by fits of vomiting and purging.

C. Where those fits owing to any physic he had taken or to the gruel?

Dr. A. Not to any physic; they came on very soon after taking the gruel.

C. Had he taken no physic that day?

Dr. A. No.

C. Did he make any further complaints?

Dr. A. He said, that, after drinking more gruel on Tuesday night August the 6th, he had felt the grittiness in his Mouth again, and that the burning and pricking in his tongue, throat, stomach and bowels, had returned with double violence and had been aggravated by a prodigious swelling of the belly, and exquisite pains and prickings in every external as well as internal part of his body, which prickings he compared to an infinite number of needles darting into him all at once.

C. How soon after drinking the gruel?

Dr. A. Almost immediately. He told me likewise, that at the same time, he had had cold sweats, hiccup, extreme restlessness and anxiety; but that then, *viz.* on Saturday night August the 10th, having had a great many stools, and some bloody ones, he was pretty easy every where, except in his mouth, lips, nose, eyes, and fundament; and except some transient gripings in his bowels. I asked him, to what he imputed those uneasy sensations in his mouth, lips, nose, and eyes? he said to the fumes of something he had taken in his gruel on Monday night August the 5th, and Tuesday night August the 6th.

On inspection, I found his tongue swelled and his throat slightly inflamed and excoriated. His lips especially the upper one were dry and rough, and had angry pimples on them. The inside of his nostrils was in the same condition. His eyes were a little blood-shot. Besides these appearances, I observed that he had a low, trembling, intermitting pulse; a difficult unequal respiration; a yellowish complexion; a difficulty in the utterance of his words; and an inability of swallowing even a tea-spoonful of the thinnest liquor at a time.

As I suspected that these appearances and symptoms were the effect of poison, I asked Miss Blandy whether Mr. Blandy had lately given offence to either of his servants or clients or any other person? She answered *That he was at Peace with all the World, and that all the World was at Peace with him.* I then asked her whether he had ever been subject to complaints of this kind before? She said, that he had often been subject to the cholic and heart-burn; and that she supposed this was only a fit of that sort, and would soon go off as usual. I told Mr. Blandy that I asked these questions because I suspected that by some means or other he had taken poison. He replied, *It might be so*, or in words to that effect: but Miss Blandy said *It was impossible.*

On Saturday morning August the 10th, he seemed much

relieved; his pulse, breath, complexion, and power of swallowing, were greatly mended. He had had several stools in the night and no blood in them. The complaints which he had made of his mouth, lips, nose, and eyes were lessened; but he said the pain in his fundament continued and that he still felt some pinchings in his bowels. On viewing his fundament I found it almost surrounded with gleety Excoriations and Ulcers.

About eight o'clock this Morning I took my leave of him, but before I quitted the room, Miss Blandy desired I would visit him again the next day.

When I got down stairs, one of the maids put a paper into my hands, which she said Miss Blandy had thrown into the kitchen fire, several holes were burnt in the paper but not a letter of the superscription was effaced. The Superscription was, *The Powder to clean the Pebbles with.*

C. What is the maid's name that gave you that paper?

Dr. A. I cannot recollect which of the maids it was that gave it to me. I opened the paper very carefully, and found in it a whitish powder, like white arsenic in taste, but slighty dicoloured by a little burnt paper mixed with it. I cannot swear this powder was arsenic or any other poison, because the qnantity was too small to make any experiment with, that could be depended on.

C. What do you really suspect it to be?

Dr. A. I really suspect it to be white arsenic.

C. Please to proceed Sir.

Dr. A. As soon as the maid had left me, Mr. Norton the Apotheeary produced a powder, that, he said had been found at the bottom of that mess of gruel, which, as was supposed had poisoned Mr. Blandy. He gave me some of that powder, and I examined it at my leisure, and believe it to be white arsenic.

On Monday morning August the 12th I found Mr. Blandy much worse than I had left him the day before, his bowels were still in pain.

I now desired that another Physician might be called in, as I apprehended Mr. Blandy to be in the utmost danger, and that this affair might come before a Court of Judicature. Dr. Lewis was then sent for from Oxford. I staid with Mr. Blandy all this day. I asked him more than once whether he really thought he had taken poison? He answered each time, that he believed he had. I asked him whether he thought he had taken poison often? He answered in the affirmative. His reasons for thinking so, were, because some of his teeth had decayed much faster than was natural; and because he had frequently for some months past, especially after his daughter had received a present of *Scotch Pebbles* from Mr. *Cranstoun*, been affected with very violent and unaccountable prickings and heats in his tongue and throat, and with most intolerable burnings, and pains in his stomach and bowels, which used to go off in vomitings and purgings. I asked him whom he suspected to be the giver of the poison? The tears stood in his eyes; yet he forced a smile and said—*A poor Love-sick Girl—I forgive her—I always thought there was mischief in those cursed Scotch Pebbles.*

Dr. Lewis came about eight o'clock in the evening. Before he came Mr. Blandy's complexion, pulse, breath, and faculty of Swallowing were got much better again; but he complained more of pain in the fundament.

* * * *

Dr. Addington. On Tuesday morning August the 13th, we found him worse again. His countenance, pulse, breath and power of swallowing, were extremely bad. He was excessively weak. His hands trembled. Both they and his face were cold and clammy. The pain was intirely gone from his bowels, but not from his fundament. He was now and then a little delirious. He had frequently a short cough, and a very extraordinary elevation of his chest, in fetching his breath; on which occasions an ulcerous matter generally issued from his fundament. Yet in his sensible intervals, he was cheerful and jocose; He

said, *He was like a Person bit by a Mad Dog; for that he should be glad to drink, but could not swallow.*

About noon this day his speech faultered more and more. He was sometimes very restless, at others very sleepy. His face was quite ghastly. This night was a terrible one.

On Wednesday morning, August the 14th, he recovered his senses for an hour or more. He told me, he would make his will in two or three days; but he soon grew delirious again; and sinking every moment, died about Two o'Clock in the afternoon.

C. Upon the whole, did you then think, from the symptoms you have described, and the observations you made, that Mr. Blandy died by poison?

Dr. A. Indeed I did.

C. And it is your present opinion?

Dr. A. It is; and I have never had the least occasion to alter it. His case was so particular that he had not a symptom of any consequence, but what other persons have had, who have taken White Arsenic; and, after death, had no appearance *(except a stone in the Gall bladder)* in his body, but what other persons have had, who have been destroyed by white arsenic.

C. When was his body opened?

Dr. A. On Tuesday in the afternoon, August the 15th.

C. What appeard on opening it?

Dr. A. I committed the appearances to writing, and should be glad to read them, if the Court will give me leave.

Then the Doctor, on leave given by the Court, read as follows:

Mr. Blandy's back and the hinder part of his arms, thighs, and legs were livid. That fat which lay on the muscles of his belly, was of a loose texture, inclining to a state of fluidity. The muscles of his belly were very pale and flaccid. The cawl was yellower than is natural; and on the side next the stomach and intestines looked brownish. The heart was variegated with purple spots. There was

no water in the pericardium. The lungs resembled bladders half filled with air and blotted in some places with pale but in most with black ink. The liver and spleen were much discoloured; the former looked as if it had been boiled, but that part of it which covered the stomach was particularly dark. A stone was found in the gall-bladder. The bile was very fluid and of a dirty yellow colour, inclining to red. The kidneys were all over stained with livid spots. The stomach and bowels were inflated, and appeared, before any incision was made into them, as if they had been pinched, and extravasated blood had stagnated between their membranes. They contained nothing, as far as we examined, but a slimy bloody froth. Their coats were remarkably smooth, thin, and flabby. The wrinkles of the stomach were totally obliterated. The internal coat of the stomach and duodenum, especially about the orifices of the former, were prodigiously inflamed and excoriated. The redness of the white of the eye, in a violent inflammation of that part, or rather the white of the eye just brushed and bleeding with the beards of barley, may serve to give some idea how this coat had been wounded. There was no schirrus in any gland of the abdomen; no adhesion of the lungs to the pleura; nor indeed the least trace of a natural decay in any part whatever.

(Dr. Lewis confirmed this part of the Evidence.)

Dr. Addington Cross examined.

* * * *

Prisoners Counsel. Why do you believe it to be White Arsenic?

Dr. A. For the following Reasons: 1. This Powder has a milky Whiteness; so has White Arsenic. 2. This is gritty and almost insipid; so is White Arsenic. 3. Part

of it swims on the surface of cold water like a pale sulphureous film; but the greatest part sinks to the bottom, and remains there undissolved; the same is true of white arsenic. 4. This thrown on red hot iron, does not flame, but rises entirely in thick white fumes, which have the stench of garlick; and cover cold iron held just over them, with white flowers; white arsenic does the same. 5. I boiled ten grains of this powder in four ounces of clean water, and then, passing the decoction through a filtre, divided into five equal parts, which were put into as many glasses: Into one glass I poured a few drops of Spirit of Sal Ammoniac; into another some of the Lixivium of Tartar; into the third some strong Spirit of Vitriol; into the fourth some Spirit of Salt; and into the last some Syrup of Violets. The Spirit of Sal Ammoniac threw down a few particles of pale sediment. The Lixivium of Tartar gave a white cloud, which hung a little about the middle of the glass. The Spirits of Vitrol and Salt made a considerable precipitation of a lightish coloured substance; which in the former, hardened into glittering chrystals, sticking to the sides and bottom of the glass. Syrup of Violets produced a beautiful pale green tincture. Having washed the saucepan, funnel, and glasses, used in the foregoing experiments, very clean, and provided a fresh filtre, I boiled ten grains of white arsenic bought of Mr. Wilcock, Druggist in Reading, in four ounces of clean water; and filtering it and dividing it into five equal parts, proceeded with them just as I had done with the former decoction. There was an exact similitude between the experiments made on the two decoctions. They corresponded so nicely on each trial, that I declare I never saw any two things in Nature more alike, than the decoction made with the powder found in Mr. Blandy's gruel, and that made with white arsenic. From the experiments, and others, which I am ready to produce, if desired, I believe that powder to be White Arsenic.

* * * *

She had put a little of it into his cup of tea; but that he never drank it; that part of the powder swimming at top of the tea, and part sinking at the bottom, she had poured it out of the window.

See Hargrave's State Trials. Vol. 10.

Extracts from the Evidence delivered on the Trial of *John Donellan*, Esq. for the Wilful Murder, by Poison, of Sir *Theodosius Edward Allesley Boughton*, Bart. at the Assizes at Warwick, on Friday, March 30th, 1781.

(*Taken in Short-hand by J. Gurney.*)

EVIDENCE FOR THE CROWN.

Lady Anna Maria Boughton, Mother of the deceased, Sworn—Examined by Mr. Howorth.

Q. Give the Jury an account of the physic you gave him, and the manner of its operation.

A. I asked him where the bottle was: he said it stood there upon the shelf. First of all he desired me to get him a bit of cheese in order to take the taste out of his mouth, which I did: he desired me to read the lable; I accordingly did, and found there was written upon it, *Purging draught for Sir Theodosius Boughton.*

Q. When you gave him the draught, did he make any, and what observations upon it?

A. As I was talking to him I omitted shaking the bottle: he, observing that, said, Pour it back again, and shake the bottle, and in so doing I spilt part of it upon the table; the

rest I gave him. As he was taking it, he observed it smelt and tasted very nauseous; upon which I said, I think it smells very strongly like bitter almonds. I gave him the cheese; he chewed it, and spit it out. He then remarked that he thought he should not be able to keep the medicine upon his stomach. I asked him if he would have some water; I gave him some. He washed his mouth, and spit that out, and then laid down.

Q. Please to open that bottle, [giving Lady Boughton the genuine draught] and smell at it, and inform the Court whether that smells at all like the medicine Sir Theodosius took.

A. No, it does not.

Q. Please to smell to this, [giving Lady Boughton the draught with the laurel water added to it.]

A. This has a smell very like the smell of the medicine which I gave him.

Q. What was the first observation your Ladyship made of any appearances upon Sir Theodosius after taking the medicine?

A. In two minutes, or two minutes and a half, after he had taken it, he struggled very much; it appeared to me, as if it was to keep it down; and made a prodigious rattling in his stomach, and guggling; and he appeared to me to make very great efforts to keep it down.

Court. How did he make a rattling?

A. A noise in his stomach as if it would come up again.

Q. How long did you observe these symptoms continue?

A. About ten minutes; he then seemed as if he was going to sleep, or inclined to doze. Perceiving him a little composed, I went out of the room. I returned in about five minutes after into his room; then, to my great surprise, I found him with his eyes fixed upwards, his teeth clenched, and froth running out of each corner of his mouth.

Q. What did you do upon that?

A. I ran down stairs, and told the servant to take the

first horse he could get, and go immediately for Mr. Powell, the Apothecary.

Q. Was any other person sent for?

A. No.

Q. When did you first see Mr. Donellan after that?

A. I saw him in less than five minutes; he came up to the bed chamber where my son was, and asked me, What do you want? I said I wanted to inform him what a terrible thing had happened; that it was an unaccountable thing in the doctor to send such a medicine, for if it had been taken by a dog, it would have killed him; and I did not think my son would live. He asked in what manner Sir Theodosius was taken; and I told him. Then he asked me where the physic bottle was? I shewed him the two draughts. He took up one of the bottles and said, Is this it? Yes, said I. He took it up, poured some water out of the water bottle, which was just by, into the phial, shook it, and then emptied it out into some dirty water which was in a wash-hand bason.

Q. Did you make any observation upon that conduct?

A. After he had thrown the contents of the first bottle into the wash-hand bason of dirty water, I observed that he ought not to do that: I said, What are you at? you should not meddle with the bottle. Upon that he snatched up the other bottle, and poured water into it, and shook it; then he put his finger to it, and tasted it. I said, What are you about? you ought not to meddle with the bottles. Upon which he said, I did it to taste it.

Q. Had he tasted the first bottle?

A. No.

Catharine Amos sworn. Examined by Mr. Geast.

Q. Did you live at Lawford-hall at the time of the death of Sir Theodosius Boughton?

A. Yes.

Q. In what capacity?

A. I was cook.

Q. Was you sent for by Lady Boughton?

A. I was sent for to my lady, by the other maid, Sarah Blundell, who is dead. I was called up stairs into that room where Sir Theodosius lay.

Q. When you came into the room in what situation was Sir Theodosius Boughton?

A. He did not stir hand or foot, but frothed at his mouth. I wiped the froth four or five times from his mouth.

Q. Was the body motionless?

A. The stomach heaved very much.

Q. Was there any noise?

A. He guggled at the throat.

Q. Give an account of any other circumstances that you observed?

A. I did not observe any thing more.

Q. Where did you go to from thence?

A. I went below stairs about my work. My work lay below stairs.

Q. How long afterwards was it before you saw Mr. Donellan?

A. It might be about a quarter of an hour. I saw him in the passage. Mr. Donellan said, Sir Theodosius was out very late over night a fishing, that it was very silly of him, as he had been taking such physick as he had been taking of, before time.

Q. That is before that time?

A. Yes.

Q. Did he give any reason why he had been out so late a fishing?

A. No.

Q. Did he say any thing more at that time?

A. Not to the best of my knowledge.

Q. Did you see Mr. Donellan the day that the body was opened?

A. Yes.

Q. What did Mr. Donellan say at that time?

A. He said there was nothing the matter, that it was a

blood-vessel had broke which had occasioned Sir Theodosius's death.

Q. Did Mr. Donellan bring any thing to you at or about the time of Sir Theodosius's death?

A. No.

Q. At any time before his death?

A. No, nothing at all.

Q. Did he never bring you any thing for any purpose?

A. No.

Q. Was any thing brought to you by Mr. Donellan within a fortnight or three weeks before the death of Sir Theodosius Boughton?

A. No.

Counsel for the Prisoner to Lady Boughton. Did Sir Theodosius Boughton speak at all after he had taken the medicine?

Lady Boughton. Not at all.

Mr. Geast to Catharine Amos. You said you was cook maid?

A. Yes.

Q. Was the oven under your direction?

A. Yes.

Q. Was any thing brought to you at any time?

A. Yes, a still.

Q. Who brought it?

A. Mr. Donellan.

Q. When was it?

A. Sometime after Sir Theodosius's death.

Q. How long after?

A. To the best of my remembrance it might be a fortnight.

Q. What was there in it?

A. Nothing. It had been washed. He desired me to put it into the oven to dry it, that it might not rust; I said if I put it in then it would unsolder it, as it was made of tin.

Dr. Rattray sworn. Examined by Mr. Balguy.

Q. You are, I believe, a Physician at Coventry?

A. I am.

* * * * * * * *

Q. How soon after this was it that you was again sent for upon this melancholy occasion?

A. On the 9th of September; I think it was on a Saturday.

A. Who did you receive a message from at that time?

A. I really do not know; I received a message by some strange round-about way, in consequence of which I went, but I don't know who sent it. Mr. Wilmer and I went in company; we met Mr. Bucknill, Mr. Powell, of Rugby, and Mr. Snow, of Southam; those were all the physical people I believe. Mr. Bucknill opened the body.

Q. Were did you meet at that time?

A. In the church-yard at Newbold.

Q. The body had then been interred?

A. It had been in the vault at Newbold as I understood.

Q. What passed at that time?

A. We proceeded to the opening of the body as soon as we conveniently could, and inspected as far as we were able the appearances of the body.

Q. What were the material appearances that struck you at that time?

A. The material appearances where, in the first place, the body appeared upon a general view swoln or distended a good deal; the face of a round figure extremely black, with the lips swelled and retracted and shewing the gums; the teeth black except a small white speck on one of the fore teeth; the tongue protuding beyond the fore teeth, and turning upwards towards the nose; the blackness descended upon the throat, gradually diminishing as it got towards the breast, and the body was spotted in many parts but not very material. There was another circumstance which for decency I have omitted, but if called upon I am ready to mention.

Mr. Balguy. That circumstance is not at all material. I meant to ask you merely to such appearances as were material. Were there any appearances upon the body sufficient to cause or confirm an opinion you may by and by give upon the subject?

A. We proceeded to open the body, and in dissecting the skin the fat appeared in a dissolving state a little watery; on getting into the cavity of the belly the bowels in the lower belly seemed to put on the appearance of inflammation. I choose to make use of the valgar term *appearance*, in order to convey a general idea of the appearance things in that state generally put on.

Q. Was it so with the stomach too?

A. Yes: the orifices of the stomach and the small arch of the stomach; the heart upon opening the pericardium, the membrane which encloses it, appeared to be in a natural state; the lungs appeared what I call suffused with blood, looking red and spotted in many places with black specks; and on the back part the blood had settled in a deep red colour, almost approaching to purple; the diaphragm was in the same state, and in general upon the depending surfaces of the body the blood was settled in the like manner; the kidneys appeared black as tinder, and the liver much in the same state. These I think are most of the appearances I need mention upon the present occasion.

Q. Have you heard the evidence of Mr. Powell, the apothecary?

A. I have.

Q. And have heard too the evidence of Lady Boughton?

A. I have.

Q. Now from the evidence of Mr. Powell and the evidence of Lady Boughton, independent of appearances, for I would have you forget them for the present instant; what was in your judgment the occasion of Sir Theodosius Boughton's death?

A. Independent of the appearances of the body, I am of opinion that the draught, in consequence of the symptoms

which succeeded the swallowing of it, as described by Lady Boughton, was poison ; and the immediate cause of his death.

Q. Please to smell upon that bottle ; what in your judgment is the noxious medicine in that bottle ?

A. I know the liquid well; it is a distillation of laurel leaves, commonly called laurel water.

Q. You have heard Mr. Powell's account of the mixture he prepared for Sir Theodosius Boughton ; was the mixture innocent and proper ?

A. In my opinion it was perfectly innocent.

Q. You have said that in your judgment laurel water is contained in this bottle ?

A. Yes.

Q. Have you made any particular experiments upon the effects of laurel water ?

A. I have several.

Q. You will please to relate the particular experiments you have made, and the appearances in consequence of those experiments ?

A. Mr. Wilmer and I made experiments together ; our first experiment with laurel water was upon a middle sized dog ; I held his mouth open and there was I believe nearly two ounces of laurel water poured down his throat. I held the dog between my knees : in half a minute as nearly as I can guess, he dropped dead to the ground without any motion, except a tremulous motion once or twice of the lower jaw. The next animal on which I tried the laurel water was likewise in company with Mr. Wilmer. To an aged mare, we gave at repeated intervals out of an horn, I believe about a pint and an half of laurel water In about two minutes she was precipitated to the ground with her head under her, and then tumbled on her back kicking violently ; she afterwards lay without kicking but seemed convulsed, her eyes rolling about, rearing up her head as if in agonies, gulping at her stomach as if something lay there exceeding offensive to her ; and at that instant and during the whole time she lived afterwards, heaving in the flanks in a most

extraordinary manner, and at the end of fifteen minutes she expired. After this in company with Mr. Ewbank of Coventry, I gave to a cat about a spoonful of laurel water which I had myself seen distilled; it was pale and limpid as pure distilled waters, and seemed very weak. The cat though I believe she had not half the quantity I intended she should have taken, died in three minutes.

Q. What quantity did you pour down the cat's throat?

A. About a spoonful, about half an ounce. At Southam, the beginning of this week, I gave in presence of Mr. Snow, to another aged horse, about a pint of laurel water, distilled by Mr. Snow. Upon his receiving into his stomach the first horn full, which was a small one, no bigger than we used in the former experiment, he dropped to the ground.

Court. What was the quantity that horn held?

A. I suppose three or four ounces. It was impossible to give the animal the whole of it, full half was spilt. I conceived it to be very strong, and desired Mr. Snow would give her no more at that time, in order to try the strength of it. The horse dropped; he endeavoured to raise himself up, but could rise no farther than by setting himself upon his buttocks like a dog. I perceived he had entirely lost the use of his hinder parts. We then gave him another horn full, which in its turn knocked him down very soon, and at intervals we gave him several horns full to the amount of above a pint in the whole, and at the end of twenty-eight minutes he expired, violently convulsed, groaning, his tongue lolling out of his mouth; and indeed the first horse's tongue had a very extraordinary appearance, for it darted backward and forward in the manner of a dart, but this horse lolled his tongue out like a dog when running. In both the horses the artery in the neck beat much, even after the animal had ceased to breathe, except we call the motion of the lower jaw, a kind of gasping, breathing. I saw all the bodies opened, and in all of them there was a violent distention of the veinous system, of the whole veins in the body, the stomach, bowels, lungs, and so on. The veins were distended

and full of blood, the lungs appeared red and suffused. I said before that I did not use the term *inflammation* in any other way than to convey the vulgar idea the appearance of red colour given to any part by blood. The lungs suffused with blood looking very red, and in the first horse it was of the colour of a deep pink; very different I conceive from the natural colour.

Q. You have smelled to the bottle which has the laurel water in it, do you know any smell in medicine that corresponds in smell with that mixture?

A. I do not know any medicine that smells like it.

Q. Does the smell described by Lady Boughton, something like bitter almonds, convey to you an idea of that mixture?

A. It does, and I have given the laurel water to many people to smell to, and they always described the smell to be something like bitter almonds. I do not exactly know how they expressed themselves, but they meant to say that.

Q. In your judgment is the quantity that one of these bottles contains of laurel water sufficient to take away life from any human creature?

A. In my opinion it is.

Q. I have now got your opinion upon the subject, independent of any appearances you observed upon the body of Sir Theodosius Boughton. Now are you from these appearances confirmed, or otherwise, in the opinion you have given?

A. Confirmed in it so far as upon viewing a body so long after the death of the subject one can be allowed to form a judgment upon such appearances.

Dr. Rattray. Cross-examined by Mr. Newnham.

Q. If I do not misunderstand you, Doctor, the last account you gave in answer to the question, Whether you are confirmed in this opinion by the appearance; you said Yes, so far as you might be allowed to form an opinion viewing the body so long after the death of the subject?

A. Yes; so far as we may be allowed to form a judgment upon appearances so long after death.

Q. By your putting it in that way, do you, or do you not mean to say that all judgment upon such a subject, in such a case, is unfounded?

A. I cannot say that, because from the analogy between the appearances in that body, and those distinguishable in animals killed by the poison I have just mentioned, I think them so much alike that I am rather confirmed in my opinion with respect to the operation of the draught.

Q. Those bodies were instantaneously opened?

A. Yes, so much so that there was the peristaltick motion of the bowels upon their being pricked.

Q. This was upon the eleventh day after Sir Theodosius's death?

A. Yes.

Q. What was the appearance of the body when you first went to Lawford Hall?

A. At the first time I saw the body, what I did see of it was, the face was in the condition I have described, with a maggot crawling over its surface, it was black as I have described, it was quite in the same state; in short, I saw no difference the last day, excepting that the maggot was not upon it then.

Q. Were you or not offended by a violent stench as you approached the dead body?

A. We were.

Q. Had not putrefaction considerably taken place?

A. I believe it had.

Q. Does not putrefaction increase very much in the space of five or six days, in a hot summer?

A. I should think it must certainly increase.

Q. Was or not the body, in a very high state of putrefaction when you saw it?

A. Upon the shroud being removed, the body appeared to me much fairer than I expected; I expected to have seen it in a very black putrified state, but the external appearance was not quite so highly so, as I expected.

Q. You mentioned that the body was much swelled?

A. It was swelled.

Q. Appearing upon a gangrene, I suppose?

A. It rather put on the appearance of gangrene.

Q. I understand you have set your name to a description of certain appearances that met your eye when you examined the body—I mean your examination?

A. I have undoubtedly.

Q. Did you, or did you not, concur with Mr. Wilmer as to the appearances of the body?

A. In general we did.

Q. You set your name to that examination?

A. I did not set my name to any thing but my own examination?

Q. Wherein the appearances are particularly described?

A. They are not particularly described, there is something said about the stomach and bowels.

Q. For what purpose then did you attend there?

A. I did not know that it was necessary before a coroner's jury to enter into the particulars; I was quite a novice in the business.

Q. Do you mean a novice in the mode of dissection.

A. No, in the business before a coroner.

Q. Did the account you set your name to, contain a true description of the appearances that met your eye upon the occasion?

A. So far as they went it did.

Q. Did you ever hear or know of any poison whatever occasioning any immediate external appearances on the human body?

A. No, no immediate external appearances in the case of vegetable poisons, except what I have heard, but they have not fallen under my own knowledge.

Q. So far for the external appearance. Now I shall be glad to know whether all the appearances you speak of in the face, the protuberance of the tongue, and the lips being swelled and retracted, whether those are not all signs of putrefaction?

A. I really don't know that they are.

Q. I do not mean to give you any offence, but I beg leave to ask whether you have been much used to anatomical dissection?

A. I have been as far as persons not particularly intended for anatomical pursuits—I am not a professor of anatomy.

Q. Did you ever attend the dissection of a human body that was poisoned, or suspected to have been poisoned?

A. Never.

Q. From the external appearances of the different parts of the body you draw no kind of conclusion or inference, and form no opinion?

A. No, I don't form any strong opinion from them.

Q. How were the appearances when the cavity of the abdomen was opened?

A. I have described them in general.

Q. Not being an anatomical man it has slipped my memory, will you please to repeat it?

A. I believe I did not before mention the omentum or caul, that was suffused with blood of a brownish red, the stomach and bowels appeared in general red, which is vulgarly called an inflammation.

Q. Might not that be owing to a transfusion of the blood?

Dr. Rattray. From what cause?

Mr. Newnham. From putrefaction.

Dr. Rattray. Do you, by a transfusion of the blood, mean the passage of the blood from the arteries into the veins?

Mr. Newnham. Yes.

Dr. Rattray. I cannot think it could arise from putrefaction.

Q. That is your opinion?

A. It is.

Q. Did you look at the stomach?

A. Yes.

Q. As Sir Theodosius Boughton is represented to have died in a few minutes after taking this medicine, did you with correctness and attention examine the stomach?

A. The contents of the stomach were about a spoonful

and an half, or a couple of ounces of a slimy reddish liquor, which I rubbed between my finger and thumb, and it contained no gritty substance that I could perceive.

Q. Is it not usual to find some such quantity of liquor in the stomach?

A. The stomach after death must contain something more or less according to different circumstances.

Q. You said the stomach and the orifice of it and the small arch of it bore the appearance of inflammation; pray is not inflammation and appearance of inflammation much the same thing.

A. All that I have to say upon the present business is I perhaps don't know the cause of inflammation; but there is an appearance of inflammation upon the stomach and bowels, owing to an injection of blood into the veinous system, the veins being full of blood, put on a red appearance.

Q. If you will not take upon you to say what is the cause, what are the signs of inflammation?

A. An appearance of redness, sometimes but not always attended with pain, and sometimes throbbing.

Q. Did you pursue your search through the bowels?

A. No; I connot say I did, nor did I think it in my power.

Q. How far did you pursue your search in the stomach?

A. We examined the contents of the stomach; we took the stomach out, but in taking it out a great part of the contents issued out of the bowels next to it; and the smell was so offensive I did not choose to enter into that matter.

Q. Whether a pursuit or enquiry, from an inspection through the bowels, was not as likely to have led to a discovery of the cause of the death, as any other part of the body which you did examine?

A. I do not believe a pursuit through the whole extent of the bowels could have led to any discovery in these circumstances.

Q. Are not the bowels the seat of poison?

A. When it passes in there, no doubt it affects the bowels.

Q. Then why did you not examine into the contents of the bowels?

A. I did not think it in the power of any one to examine into the contents of the bowels; their contents being so strong and disagreeable.

Q. Whether you do not form your judgment upon the appearances?

A. Not altogether; they corroborate my opinion upon the effect of the draught.

Q. Did you or did you not know the contents of the draught Mr. Powell had prepared when you was examined before the coroner?

A. Yes; I did.

Q. And you knew from the account given you how long Sir Theodosius Boughton lived after he took that draught?

A. I took my information from Lady Boughton.

Q. Then whether many reasons have not occurred, subsequent to that time, considerably, to induce you to form your judgment that he died of arsenick?

A. Not subsequent to that time; at that time I did think he died of arsenick; but I am now clear that I was then mistaken.

Q. Why may you not be mistaken now?

A. I cannot conceive that in these circumstances any one can be mistaken as to the medicine; from the sensible qualities described by Lady Boughton, I believe it to be of that nature.

Q. Did not you know at that time the symptoms described by Lady Boughton?

A. I did.

Q. Then was not your judgment at that time as ripe for information as it is now?

A. It is now since I have received the information.

Q. Whether you did not, after you heard Lady Boughton describe the symptoms, and after you saw the body opened, give it as your opinion that he died of arsenick?

A. I have had such an opinion.

Q. And have declared so ?

A. I did.

Q. Was there or was there not a large quantity of extravasated blood in the thorax ?

A. On each side the lungs there was.

Q. About what quantity ?

A. I think not quite a pint on each side the right and left lobe of the lungs.

Q. Would not the rupture of a blood vessel occasion death ?

A. The rupture of a blood vessel undoubtedly would have occasioned death ; but it would not in my apprehension have been attended with the same appearances.

Q. Might not a blood vessel in an effort to reach be broken ?

A. I should conceive, that if, in an effort to reach, a blood vessel of that magnitude had ruptured that he must have died immediately without convulsions.

Q. But supposing a person recovering from convulsions, for he is stated to be inclined to sleep ?

A. It is a case I am not supposing probable.

Q. Is it possible ?

A. Every thing is possible under God.

Q. Did you never hear of any person dying of an epilepsy or of an apoplexy with symptoms like those, being in convulsions ?

A. I do not think the symptoms described as having taken place in Sir Theodosius Boughton are like to an epilepsy ?

Q. Nor an apoplexy ?

A. They were entirely in my opinion the effects of the draught.

Q. Might not an epilepsy or an apoplexy be accompanied with those symptoms ?

A. I never saw either of them attended with an heaving at the stomach.

Q. When respiration grows feeble ; is it not a common case that the muscles of the throat are very much relaxed ?

A. All the effects that succeeded the draught I believe were the consequences of it; and if the muscles were relaxed or foam proceeded from the mouth, they were in consequence of it.

Q. Is it not commonly the case with persons who die of almost every disorder?

A. Very often.

Q. Are not the muscles of the throat instrumental in respiration?

A. So far as to the passage of the air in and out.

Q. Is it not a very common appearance a few minutes before death, when respiration grows feeble for froth to issue from the mouth?

A. No, not commonly. I have seen it in epilepsies.

Q. What was your reason for supposing at one time that the deceased died of arsenick?

A. Every man is mistaken now and then in his opinion, and that was my case; I am not ashamed to own a mistake.

Q. Have you been very nice in your experiments; for instance, in the conveying the laurel-water into the animals?

A. If there was any want of nicety the subject had less of it than I intended.

Q. When an animal, suppose a dog or cat, is striving to refuse a draught you are forcing into its mouth, whether it is not common for some part of the liquor to get into the lungs?

A. If it did it would make it cough, but be attended with no bad consequences unless it was poison.

Q. Did you ever convey poison immediately into the stomach?

Dr. Rattray. Do you mean by perforation through the ribs?

Mr. Newnham. Yes.

Dr. Rattray. I never have.

Q. Did you ever convey any into the veins of an animal?

A. I never have.

Q. Did you observe or smell that liquor which came out of the stomach?

A. I could not avoid smelling it.

Q. Had it the same offensive smell?

A. It in general had; one could not expect any smell but partaking of that general putrefaction of the body; but I had a particular taste in my mouth at that time, a kind of biting acrimony upon my tongue. And I have in all the experiments I have made with laurel-water, always had the same taste, from breathing over the water, a biting upon my tongue, and sometimes a bitter taste upon the upper part of the fauces.

Q. Did you impute it to that cause then?

A. No, I imputed it to the volatile salts escaping the body.

Q. Were not the volatile salts likely to occasion that?

A. No. I complained to Mr. Wilmer, "I have a very odd taste in my mouth, my gums bleed."

Q. You attributed it to the volatility of the salts?

A. At that time I could not account for it, but in my experiments afterwards with the laurel-water, the effluvia of it has constantly and uniformly produced the same kind of taste; there is a very volatile oil in it I am confident.

Q. Do not you understand that there cannot be any information at all obtained in consequence of dissecting animals which have been destroyed by laurel-water?

A. I do not think that the operation of these sort of substances upon the inside of the stomach produce any violent appearances of redness, but in most of the animals I have seen there has been small red spots inside, of the size of a shilling perhaps, but the effect in the trials I have made has been a driving the blood from the part of the body where it should be. I believe the effect of the poison is to empty the arteries in general, and push the blood into the veins; that is my opinion at present, so far as I have gone into the matter.

Q. But you was mistaken at first relative to forming an opinion that the death was occasioned by arsenick?

A. Yes.

Mr. Balguy. You say that when the shroud came to be taken off the body you found the body less offensive than you had expected?

A. Less black.

Q. When you first saw the body on the 4th of September, did you or not take the shroud off?

A. We did not.

Q. You saw nothing but the face?

A. Nothing but the face.

Q. If at that time Captain Donellan had insinuated to you any suspicion of poison, whether you would or not have taken the shroud from the body?

A. I verily believe, had I known the tendency of the enquiry, I should have sat there for a month rather than have left the body unopened.

Q. Should you at that time if the suspicion had been disclosed have proceeded to open the body?

A. I should have attended the opening of it.

Mr. Newnham. I understand you to say that when the body was opened, the external appearances did not contribute in any way to your forming a judgment one way or other?

A. Nobody would attempt to form a judgment upon the external appearances altogether.

Mr. *Bradford Wilmer* sworn. Examined by Mr. Wheeler.

Q. You was sent for to Lawford-hall at the same time Dr. Rattray was?

A. I was; I went there with Dr. Rattray.

Q. When first you came there did you see Captain Donellan?

A. I did. He desired us to walk into the parlour; after we had had some refreshment we were told that the coffin was unsoldered, and we were desired to walk up stairs.

Q. Was any thing said to you at that time as to the means by which Sir Theodosius Boughton had died?

A. Not the least in the world.

Q. Nothing said of poison?

A. I never heard a word of poison.

Q. When you did go up stairs, what part did you see of the corpse?

A. Only the face.

Q. We have learned from Dr. Rattray that you did not proceed any farther, how happened that?

A. The body was so extremely putrid, that I declared my opinion to Dr. Rattray that the proposed enquiry could give no sort of information.

Q. Supposing it had been communicated to you that Sir Theodosius Boughton had died by poison, should you have been satisfied without opening it?

A. I should then have opened the body at all events.

Q. You did not then open the body?

A. I certainly did not.

Q. You afterwards did open it at the time Dr. Rattray has spoken of?

A. I was present at the opening of the body, by Mr. Bucknill.

Q. Have you been employed in any experiments with Dr. Rattray?

A. I have.

Q. Without going into every particular of Dr. Rattray's account, do you and he concur in general as to the effect of that medicine?

A. I wish you would be more particular in that question.

Q. Do you agree with Dr. Rattray in what he has said respecting those experiments at which you was present?

A. I do in general; but as Dr. Rattray has not described the appearances which were visible upon the dissection of the horse, with your lordship's permission I will read my minutes. "On the 20th of March, one ounce of the laurel water was given to a young greyhound; while Dr. Rattray held the mouth open, I poured the water into the dog's throat; as soon as it was swallowed the Doctor released its head to observe the effects of the poison, when, to our great

surprise, he fell down upon his side, and without the least struggle or any perceptible motion (except what the doctor has explained about the dropping of the lower jaw) expired. On the 22d of March, in the presence of Sir William Wheeler, a pint and a quarter of laurel-water was given to a mare aged twenty-eight years. Within a minute from the time it was swallowed she seemed affected; her flanks were observed to heave much, and a trembling seized her limbs; in two minutes she suddenly fell down upon her head, and in a short time after was very violently convulsed; the convulsions continued about five minutes, at the expiration of which time, she laid still, but her breathing was very quick and laborious, and her eyes much affected with spasms. At this time four ounces more of the water were given her, after which she seemed much weaker, but without any more return of convulsions, and in about fifteen minutes from the time of her first seizure, she expired."

Q. After her first convulsion she was quieter?

A. She was. "Upon opening the abdomen, a strong smell of laurel-water was perceptible; the colon, one of the large intestines, was not altered from its usual appearance, but the small intestines appeared of a purple colour, and the veins were much distended with blood; the stomach contained some hay mixed with laurel water; its internal surface was not inflamed, except in a small degree near the lower orifice of the stomach; the lungs appeared remarkably full of blood; the small vessels upon their surface being as visible as if they had been injected with red wax."

Q. Whether you in general concur in sentiments with Dr. Rattray, as to the effect of laurel-water?

Mr. Wilmer. Do you mean upon the human body, or upon brutes?

Mr. Wheeler. Upon both.

A. It has in four instances been fatal in the human body; I do not know it of my own knowledge, but from my reading.

Q. Have you any doubt of its being fatal?

A. Not the least in the world.

Q. Now do you apprehend the quantity contained in that bottle is sufficient to take away life?

A. I imagine one bottle of that size full of laurel-water, would be sufficient to kill in half an hour's time any man in this court.

Mr. *Bradford Wilmer.* Cross-examined by Mr. Green.

Q. Were there any symptoms in this case peculiarly different from the symptoms attending a case of epilepsy or apoplexy?

A. The appearance of the body in the putrid state in which it was when I had an opportunity of observing it, could give me no information to form an opinion upon respecting the cause of the death.

Q. Have you had any opportunities in your own experience of observing epilepsies?

A. I have. They are of two kinds, either primary or symptomatick. It happens sometimes that without the least previous notice, a man in the most perfect state of health, in the midst of pleasure or engaged in business, as Suetonius says of Julius Cæsar, may in a moment, be seized with the epilepsy, his senses will leave him, he will fall down, be convulsed, foam at the mouth, his tongue will be black, and he either may die or recover. As to the symptomatick epilepsy, I can speak from experience: a patient of mine had a violent pain and tumour in his finger; as soon as the pain, which gradually went up his arm, reached his arm-pit, he fell down epileptick, and convulsed. But if previous to an epilepy, the patient heave very much at the stomach, and shew signs of sickness, I should conclude the cause of that epilepsy was in the stomach.

Q. Epilepsies proceed from various causes?

A. Numerous causes.

Q. Will not the loss of blood occasion an epilepsy?

A. I believe not.

Q. What quantity of blood was there in the stomach?

A. I did not measure it; I conclude about two pints; it lodged in the cavity of the thorax.

Q. Might not that occasion convulsions?

A. I do not know; but if I might be allowed to reason from analogy, I should conclude it would, for in all slaughtered animals, when the blood runs out from them in a full stream, they lie quiet, but they never die without convulsions. The loss of blood will evidently occasion convulsions.

Mr. Wheeler. From the appearances of the body, and after the evidence you have heard given both by Lady Boughton and the other witnesses, what do you attribute this gentleman's death to?

A. After having heard Lady Boughton's evidence, and therefore being acquainted with the symptoms which preceded the death of Sir Theodosius Boughton, I am clearly of opinion that his death was occasioned by a poisonous draught administered to him by Lady Boughton on the morning of his death.

Court. Is the heaving in the stomach or the belly a circumstance which attends an epilepsy?

A. It is not.

Dr. Ashe sworn. Examined by Mr. Geast.

Q. You are a Physician and live at Birmingham?

A. Yes.

Q. You have heard the evidence that has been given?

A. I have.

Q. What in your judgment was the cause of the death of Sir Theodosius Boughton?

A. I think he died in consequence of taking that draught, after the taking of which he was seized in so extraordinary a manner.

Q. Mention the particular reasons you have for thinking so?

A. It does not appear, from any part of the evidence that has been this day given, that the late Sir Theodosius had any disease upon him of a nature either likely or in a degree suf-

ficient to produce those violent consequences which happened to him, neither do I know in nature any medicine, properly so called, which administered in any dose, and in any form, could possibly produce the same effects. I know nothing but a poison speedy in its operation that could be attended with such terrible consequences: As to the appearances of the body upon dissection they were certainly, as far as could be collected at that distant period from the time of the death, and in such hot weather, similar to those appearances which are found in the bodies of animals that are killed by poisons collected from vegetable substances, not from mineral ones.

Q. Will you please to look at that phial?

A. The vehicle of it is laurel-water.

Q. Would that quantity be sufficient to cause death?

A. I do not know how this is distilled, or how firm it may be, but I know it may be made in this quantity to destroy animal life in a few seconds. I do not know who distilled this, but I have made it frequently myself, and in such a degree of strength as to destroy animal life in a few seconds; if it is distilled enough to collect the essential oil, a tea-spoonful of it would destroy animal life in a few seconds.

Court. If it was made on purpose?

A. Certainly; I dare say as strong a poison might be made from bitter almonds as that.

Q. Do you or not, from the evidence you have heard, believe Sir Theodosius Boughton died of poison?

A. I do.

Court. You are not to give your opinion from the evidence in general, but upon the symptoms those witnesses have described?

A. By the symptoms those evidences have described, I am of opinion that Sir Theodosius Boughton died of poison.

Dr. Parsons sworn. Examined by Mr. Howorth.

Q. You are I believe professor of anatomy in the university of Oxford?

A. I am.

Q. You have heard the symptoms attending the death of Sir Theodosius Boughton described by the witnesses produced to-day?

A. I have.

Q. What in your judgment occasioned the death of Sir Theodosius Boughton?

A. From the description of the state of the young Baronet's health, previous to his taking the second dose, which was supposed to be similar to that which he had taken two or three days before, and from the violent nervous symptoms that immediately followed the taking thereof, it is my opinion that he died in consequence of taking the second dose; which instead of being a composition of jalap and rhubarb only, proved to contain a poison, and of what nature that poison was, appears sufficiently from the description that Lady Boughton gives of its smell when she poured it out in order to give it to her son; her ladyship said it smelt like the taste of bitter almonds, which particularly characterises the smell of laurel-water. Perhaps it may not be improper to produce some laurel-water for the jury to smell at, that they may judge how well it agrees with the description that Lady Boughton has given of the supposed physick. The violent nervous symptoms that came on subsequent to his taking the second dose took place so soon, and were so different from what attended the taking of the first, that undoubtedly they were caused by something it had in it very different from the contents of the first, much more active, and as it proved more deleterious. Jalap sometimes disagrees with the stomach and may produce sickness, but with respect to Sir Theodosius Boughton this medicine did not create any sickness when given the first time.

Court. Could all the ingredients in the medicine mentioned by Mr. Powell produce in Sir Theodosius Boughton the effects described?

A. No; I apprehend they could not; and as a proof of it, they did not produce any such effects in the first instance, or dose.

Q. Are the symptoms which have been described by Lady Boughton such as would attend an epilepsy, or is there any and what difference?

A. The epilepsy is distinguished by a total abolition of sense, but an increase of motion in several of the muscles, so that the patient will appear much convulsed, and seems to see and hear every thing that is said and done, and to observe whatever is passing; yet when the fit goes off he has no knowledge or recollection of what has happened. Apoplexy is a sudden privation of all the powers of sense, and voluntary motion: the person affected seeming to be in a profound sleep, accompanied with considerable noise in breathing. As so little therefore is said of convulsions as a part of Sir Theodosius's symptoms, the state in which he lay seems to have been more of the apoplectick kind than epileptick.

Q. It has been described by Lady Boughton that soon after taking this draught the stomach heaved very much, and a noise could be perceived as issuing from it; now is that in your judgment to be attributed to either epilepsy or apoplexy, or the effect of the medicine?

A. The effects of the medicine I think undoubtedly, and not spontaneous epilepsy or apoplexy; it is very immaterial whether you call the symptoms epileptick or apoplectick; for which ever they resembled most I consider them but as symptomatick.

Q. Was the heaving of the stomach the effect of apoplexy or epilepsy, or of this draught?

A. No doubt, I think the draught was the cause, especially as laurel-water, which the draught seems to have contained from its peculiar smell, will produce similar effects.

Q. Then your judgment is, that the fatal effects were produced by the medicine thus taken?

A. I think there can be no doubt of that as they commenced almost as soon as he swallowed the draught; and a mixture such as he is supposed to have taken, is known to have the power of producing them.

Q. And from your knowledge of the effects produced by laurel water, your opinion is that laurel-water was the poison thus administered to Sir Theodosius Boughton?

A. It is. Dr. Rutty relates a case of a girl of eighteen years of age and in perfect health, who took a quantity, less than two spoons full of the first runnings of simple water of laurel leaves; whereupon within half a minute she fell down, was convulsed, foamed at the mouth, and died in a short time.

Q. Could those effects be produced (speak from your own judgment) by laurel-water?

A. I have no doubt of it. Dogs and other quadrupeds (as we are informed) that take it, fall immediately into totterings and convulsions of the limbs, which are presently followed by a total paralysis; these convulsions, with some additional circumstances, as foaming at the mouth and loss of sense, constitute the epilepsy which is described among the effects of vegetable poisons.

Dr. *Parsons* cross-examined by Mr. Newnham.

Q. From the appearances of health in Sir Theodosius Boughton, and from the medicine not having occasioned any bad symptoms before, you conclude his death was occasioned by some other medicine substituted instead of that or in addition to it?

A. Most certainly; especially as the smell of it bespoke its having received the addition of a very poisonous ingredient.

Q. Have you never known instances of persons being taken suddenly when engaged in pleasure or business, or at dinner, dying convulsed, epileptick, or apoplectick?

A. I have; but those who die suddenly of apoplexy are generally persons of a full habit; and who are neither so thin nor so young as Sir Theodosius Boughton.

Q. Have you never known instances of persons of a thin habit being attacked by an apoplexy or an epilepsy?

A. By epilepsy they may.

Q. Have you never heard of a person having the appearance of perfect health being seized with an epilepsy without

any primary cause giving any warning, have you never heard of people in perfect health being seized with an epilepsy or apoplexy?

A. Yes; apoplexy proceeding from repletion or the sudden bursting of a blood-vessel; epilepsy may proceed from a variety of causes partial or general, in the head or elsewhere; but very seldom I believe proves so suddenly fatal.

Q. Might not those have happened to Sir Theodosius Boughton?

A. There can be no doubt of the possibility of their attacking him, but I think there is no reason to go so far for a cause as to *possibility*, when this medicine as all the world knows will effect it.

Q. That is assuming as a fact that he took two ounces of laurel-water?

A. A much less quantity would be sufficient for the purpose, if we may credit Dr. Rutty's account.

Q. You collect that from the similarity of the smell?

A. We have nothing else to judge from but the similarity of the smell.

Q. Is not that the case with a variety of things; will not black cherry-water have that smell?

A. Black cherry-water is said to have the same smell, but it is now out of use; I don't suppose there is an apothecary in the island who has it, and therefore it could not be substituted by accident for the other vehicle.

Q. Will not bitter almonds have that smell?

A. Yes; and spirits flavoured with them are said to be poisonous to the human species.

Q. You ground your opinion upon the description of its smell by Lady Boughton?

A. Yes; we can ground our opinion upon nothing else but that and the subsequent effects.

Mr. John Hunter sworn; examined by Mr. Newnham.

Q. Have you heard the evidence that has been given by these gentlemen?

A. I have been present the whole time.

Q. Did you hear Lady Boughton's evidence?

A. I heard the whole.

Q. Did you attend to the symptoms her ladyship described, as appearing upon Sir Theodosius Boughton, after the medicine was given him?

A. I did.

Q. Can any certain inference upon physical or chirurgical principles be drawn from those symptoms, or from the appearances externally or internally of the body, to enable you, in your judgment to decide, that the death was occasioned by poison?

A. I was in London then, a gentleman who is in Court waited upon me with a copy of the examination of Mr. Powell and Lady Boughton, and on account of the dissection, and the physical gentlemen's opinion upon that dissection.

Q. I don't wish to go into that, I put my question in a general way?

A. The whole appearances upon the dissection, explain nothing but putrefaction.

Q. You have been long in the habit of dissecting human subjects? I presume you have dissected more than any man in Europe?

A. I have dissected some thousands during these thirty-three years.

Q. Are those appearances you have heard described, such in your judgment, as are the result of putrefaction in dead subjects?

A. Entirely.

Q. Are the symptoms that appeared after the medicine was given, such as necessarily conclude that the person had taken poison?

A. Certainly not.

Q. If an apoplexy had come on, would not the symptoms have been nearly or somewhat similar?

A. Very much the same.

Q. Have you ever known or heard of a young subject dying of an apoplectic or epileptic fit?

A. Certainly; but with regard to the apoplexy not so frequent, young subjects will perhaps die more frequently of epilepsies than old ones; children are dying every day from teething, which is a species of epilepsy arising from an irritation.

Q. Did you ever in your practice, know an instance of laurel-water being given to a human subject?

A. No, never.

Q. Is any certain analogy to be drawn from the effects of any species of poison upon an animal of the brute creation, to that it may have upon a human subject?

A. As far as my experience goes, which is not a very confined one, because I have poisoned some thousands of animals, they are very nearly the same, opium for instance will poison a dog similar to a man; arsenic will have very near the same effect upon a dog, as it would have, I take it for granted, upon a man; I know something of the effects of them, and I believe their operations will be nearly similar.

Q. Are there not many things which kill animals almost instantaneously, that will have no detrimental or noxious effect upon a human subject; spirits, for instance, occur to me?

A. I apprehend a great deal depends upon the mode of experiment; no man is fit to make one, but those who have made many, and paid considerable attention to all the circumstances that relate to experiments, it is a common experiment which I believe seldom fails, and it is in the mouth of every body, that a little brandy will kill a cat: I have made the experiment, and have killed several cats, but it is a false experiment; in all those cases where it kills the cat, it kills the cat by getting into her lungs, not into her stomach, because, if you convey the same quantity of brandy, or three times as much into the stomach, in such a

way as the lungs shall not be affected, the cat will not die; now in those experiments that are made by forcing an animal to drink, there are two operations going on, one is a refusing the liquor, by the animal, its kicking and working with its throat, to refuse it, the other is a forcing the liquor upon the animal, and there are very few operations of that kind, but some of the liquor gets into the lungs. I have known it from experience.

Q. If you had been called upon to dissect a body, suspected to have died of poison, should you or not have thought it necessary to have pursued your search through the guts?

A. Certainly.

Q. Do you not apprehend that you would have been more likely to receive information from thence than any other part of the frame?

A. That is the track of the poison, and I should certainly have followed that track through.

Q. You have heard of the froth issuing from Sir Theodosius's mouth, a minute or two before he died, is that peculiar to a man dying of poison, or is it not very common in many other complaints?

A. I fancy it is a general effect, of people dying in what you may call health, in an apoplexy, or epilepsy, in all sudden deaths, where the person was a moment before that in perfect health.

Q. Have you ever had an opportunity of seeing such appearances upon such subjects?

A. Hundreds of times.

Q. Should you consider yourself bound, by such an appearance, to impute the death of the subject to poison?

A. No, certainly not; I should rather suspect an apoplexy, and I wish in this case, the head had been opened to remove all doubts.

Q. If the head had been opened, do you apprehend all doubts would have been removed?

A. It would have been still farther removed, because,

although the body was putrid, so that one could not tell whether it was a recent inflammation, yet an apoplexy arises from an extravasation of blood in the brain, which would have laid in a coagulum. I apprehend although the body was putrid, that would have been much more visible than the effect any poison could have had upon the stomach or intestines.

Q. Then in your judgment upon the appearances the gentlemen have described no inference can be drawn from thence that Sir Theodosius Boughton died of poison?

A. Certainly not; it does not give the least suspicion.

Mr. John Hunter Cross-examined by *Mr. Howorth.*

Q. Having heard the account to-day that Sir Theodosius Boughton, apparently in perfect health, had swallowed a draught which had produced the symptoms described, I ask you whether any reasonable man can entertain a doubt that that draught whatever it was produced those appearances?

A. I don't know well what answer to make to that question.

Q. Having heard the account given of the health of this young gentleman on that morning, previous to taking the draught, and the symptoms that were produced immediately upon taking the draught, I ask your opinion as a man of judgment, whether you don't think that draught was the occasion of his death?

A. With regard to his being in health, that explains nothing; we frequently, and indeed generally see the healthiest people dying suddenly, therefore I shall lay little stress upon that; as to the circumstances of the draught, I own they are suspicious, every man is just as good a judge as I am.

Court. You are to give your opinion upon the symptoms only, not upon any other evidence given.

Mr. Howorth. Upon the symptoms immediately produced, after the swallowing of that draught, I ask whether, in your

judgment and opinion, that draught did not occasion his death? A. I can only say, that it is a circumstance in favour of such an opinion.

Court. That the draught was the occasion of his death? A. No; because the symptoms afterwards are those of a man dying, who was before in perfect health; a man dying of an epilepsy or apoplexy, the symptoms would give one those general ideas.

Court. It is the general idea you are asked about now, from the symptoms which appeared upon Sir Theodosius Boughton immediately after he took the draught followed by his death so very soon after; whether, upon that part of the case, you are of opinion that the draught was the occasion of his death? A. If I knew the draught was poison, I should say, most probably, that the symptoms arose from that; but when, I don't know that that draught was poison, when I consider that a number of other things might occasion his death, I cannot answer positively to it.

Court. You recollect the circumstance that was mentioned of a violent heaving in the stomach? A. All that is the effect of the voluntary action being lost, and nothing going on but the involuntary.

Mr. Howorth. Then you decline giving any opinion upon the subject? A. I don't form any opinion to myself; I cannot form an opinion because I can conceive if he had taken a draught of poison it arose from that; I can conceive it might arise from other causes.

Q. If you are at all acquainted with the effects and operations of distilled laurel-water, whether the having swallowed a draught of that, would not have produced the symptom described? A. I should suppose it would; I can only say this of the experiments I have made of laurel-water upon animals, it has not been near so quick; I have injected laurel-water directly into the blood of dogs, and they have not died; I have thrown laurel-water, with a precaution, into the stomach, and it never produced so quick an effect with me, as described by those gentlemen.

Q. But you admit that laurel-water would have produced symptoms such as have been described? A. I can conceive it might.

Mr. Newnham. Would not an apoplexy or an epilepsy, if it had seized Sir Theodosius Boughton at this time, though he had taken no physic at all, have produced similar symptoms too? A. Certainly.

Q. Where a father has died of an apoplexy, is not that understood, in some measure, to be constitutional? A. There is no disease whatever, that becomes constitutional, but what can be given to a child. There is no disease which is acquired, that can be given to a child; but whatever is constitutional in the father, the father has a power of giving that to the children; by which means it becomes what is called hereditary; there is no such thing as an hereditary disease; but there is an hereditary disposition for a disease.

Mr. Howorth. Do you call apoplexy constitutional?

A. We see most diseases are constitutional; the small-pox is constitutional, though it requires an immediate cause to produce the effects. The venereal disease is hereditary. I conceive apoplexy as much constitutional as any disease whatever.

Q. Is apoplexy likely to attack a thin young man who had been in a course of taking cooling medicines before? A. Not so likely, surely, as another man; but I have, in my account of dissections, two young women dying of apoplexies.

Q. But in such an habit of body, particularly attended with the circumstance of having taken cooling medicines, it was very unlikely to happen? A. I do not know the nature of medicines so well as to know that it would hinder an apoplexy from taking effect.

Court. Give me your opinion in the best manner you can, one way or the other, whether upon the whole of the symptoms described, the death proceeded from that medicine, or any other cause? A. I do not mean to equivocate, but when I tell the sentiments of my own mind, what I feel at the time, I can give nothing decisive.

Extracts from the Evidence delivered on the Trial of *Robert Sawle Donnall*, Surgeon and Apothecary, for the wilful Murder, by Poison, of his Mother-in-Law, Mrs. *Elizabeth Downing*, Widow, at the Assize at Launceston, March 31, 1817.

(Taken in short-hand by Alexander Fraser.)

EVIDENCE FOR THE CROWN.

Dr. Richard Edwards (examined by Mr. Sergt. Lens).

You are a physician, resident at Falmouth?—I am.

How many years have you been in the profession?—About sixteen years.

Do you recollect being called in, as a physician, to attend Mrs. Elizabeth Downing upon the 3rd of November?—Yes, Sir; I was called in between four and five o'clock on the Monday morning.

Were you in the habit of attending her?—Once before, at a distant period.

Several months before?—More than that.

When you came there, and when you were introduced into the room in which she was, what state did you find her in?—I was let into the house by Mr. Donnall; I went into the back room and asked him some questions as to Mrs. Downing's illness, and he informed me she had an attack of Cholera Morbus.

Did any thing more pass that was material, before you went into the room where she was?—He told me she had a similar attack a fortnight before.

Did any further communication take place?—I asked

him how long she had been ill, and he said she was taken ill the evening before.

Did any thing more pass?—Mr. Donnall told me that she had been at church twice that Sunday.

Did you then proceed into the room, or did any thing more pass?—Nothing more passed.

When you went into her room, she was in bed?—Yes, Sir, she was; I asked some questions of her attendants, before I spoke to Mrs. Downing; she required some rousing before she could answer questions.

Were you able to rouse her?—Yes, Sir.

Do you recollect any thing particular, as to her situation?—I asked her if she felt any pain, and she said she felt heat in her stomach, and also cramp in her legs; I then felt her pulse, and found it a frequent fluttering pulse. I then went down into the parlour again with Mr. Donnell, and wrote a prescription.

Did you make any further inquiries about the state of her body before you wrote the prescription?—I asked some questions of Mr. Donnall as to the state of her stomach and bowels, and he said that she had violent sickness, and that her bowels were very much relaxed.

After this you wrote the prescription?—Yes, Sir.

Did you at that time form, or could you form, any judgment of her danger, or that it was likely she would recover?—I found that she was in very great danger.

You had been apprised that she had symptoms of Cholera Morbus; did you observe any thing of that kind?—No; at that time she had no sickness.

Was her state such as to shew that she had?—There was nothing particular to draw my attention to that being her state; there was nothing to shew the causes of the disease at that time.

How long did you stay on that occasion?—I suppose about twenty minutes; I am not certain as to the time.

Did you learn from the prisoner whether he himself had given any medicine?—I understood that he had given an

opening medicine and an emetic, a saline draught in a state of effervescence, and also a pill, and some opium mixed with the saline draught; I believe he told me ten drops of laudanum.

(By Mr. Justice Abbott.) Is that a large or a small dose?—It is a small dose.

(By Mr. Sergt. Lens.) Would that only quiet her?—It was given, he said, to quiet the irritation of the stomach.

Have you ever had occasion to attend a person who had been ill, and who died of Cholera Morbus?—I never had a patient who died of that disease. There is one circumstance I would mention: before I left Mr. Donnall, I told him that as the quantity of active medicine in the prescription was small, he had better give every three hours, instead of four hours, as directed in the prescription; and observed at the same time, that it was given in order to remove something which I considered to be offensive either in the stomach or bowels.

In the course of your experience, how soon does Cholera Morbus produce death?—In general not in less than two or three days; there may be some instances, but I never met with one that produced death in less than that time.

The space of time in this instance was fourteen hours?—Yes, Sir.

Can you tell me of any instance that Cholera Morbus would produce death in so short a time?—I never heard or knew of any instance of its producing death in so short a time.

In your judgment then, and from what you know since, did this patient die of Cholera Morbus or not?—Certainly not.

You say you staid about twenty minutes?—About that time.

You then took your leave, having given directions about the prescription, which you took for granted would be administered afterwards?—Yes, Sir.

Did you see Mrs. Downing afterwards?—No, Sir.

She died at eight o'clock that same morning?—Yes.

How soon did you go again after you had heard of her decease?—I went on the Thursday afternoon to examine the body.

When you went there, was it to examine the body as to the cause of the death?—Yes; I was requested by the Coroner to examine the body.

You had heard of the letter that was sent, on suspicion being awakened?—Yes.

Whom did you meet there?—Mr. Donnall.

Was there any other person there?—Soon afterwards Mr. John Street, a surgeon, came there.

There is another person of the name of Street, a surgeon?—Yes, Sir; but this was Mr. John Street.

Shortly afterwards did you go into the room where the body lay?—Yes, Sir.

Did any thing pass before?—Nothing particular.

Who went with you?—Mr. John Street and Mr. Donnall; there was no other medical person present.

What did you do?—We took the body from the shell, and placed it on the table.

Who proceeded to operate on the body?—When the things were prepared, such as water, &c. I perceived Mr. Donnall was preparing to operate, with the instruments in his hands, and turning up the cuffs of his coat.

Did he proceed?—No; I told him that he was to have nothing to do with the operation, and I turned to Mr. John Street and asked him to do it.

(By Mr. Justice Abbott.) Did you say any thing more to Donnall than that he was to have nothing to do with the operation?—No, my Lord.

(By Mr. Sergt. Lens.) Did he (Mr. Street) prepare to do it?—He objected to it, as not having been in the habit of operating for a long time.

And in the end you were under the necessity of doing it yourself?—Yes, Sir, with Mr. Street's occasional assistance.

When you opened the body, your particular object was

the examination of the stomach?—Yes, it was the chief object of our examination, and we proceeded to do so immediately; we opened it, and examined it, and poured the contents into a basin.

Did you take out all the contents, or only a part?—The whole of the contents.

What was done with them after they were put into the basin?—We examined that which was put into the basin with our fingers, in order to ascertain whether any heavy or gritty substance had subsided to the bottom.

(By Mr. Justice Abbott.) When you say "we," whom do you mean besides yourself?— Mr. John Street, my Lord.

(By Mr. Sergt. Lens.) Donnall did not interfere?—No, Sir.

In a few minutes you examined the bottom?—Yes.

Did you find any deposit?—No deposit of any heavy substance.

When you had done that, what did you do next?—Before we particularly examined the contents of the stomach, we examined the state of the stomach, and found it inflamed.

Was it a general or partial inflammation?—It was rather partial; or what we call stellated, or in stars, in different parts of the stomach.

Were there many? were there several or only one, or were there two or three?—There were many, in different parts of the stomach.

Was there any thing else you discovered?—On examining the villous, or internal coat of the stomach, we found it softened, and in some parts nearly destroyed by the action of some corrosive substance. The stellated inflammation was on the nervous coat, but was very visible through the villous coat.

Are we to understand that the villous coat is, in general, not so soft? what should its natural state be?—It should have been much more firm than we found it.

In what way did you examine the villous coat?—With the nail of my finger, and it easily came off.

And in its proper state would it come off easily with the nail of a finger?—No, Sir. We examined particularly the under part where the fluid was.

Was it generally in that soft state?—The greatest part of it was so.

(By Mr. Justice Abbott.) The under part is where any thing in the stomach would rest and would touch?—Yes, my Lord.

(By Mr. Sergt. Lens.) Did you observe any particularity in the appearance?—The blood-vessels of the stomach were rather in a more turgid state than they should be naturally. We also examined the liver and lungs, and both appeared in a sound state.

Did you examine the heart?—I do not recollect; I am not quite certain.

Do you think that any thing affected it?—I did not examine it, that I recollect.

Did you give any directions as to what was put into the basin?—After examining the contents of the stomach, which were put into the basin, we poured them into an earthen jug.

And your attention was particularly drawn to that in the basin?—I placed the jug upon a chair, on which there was a cushion; and I took particular care that, as the seat was elastic, it should rest against the back, so as not to fall; and I said at the time that it must be taken particular care of, as it was necessary for me to examine it.

Was that said to any one in particular, or was it said generally?—Particularly to Mr. Donnall; we were very near each other.

Was there any other person present but you three?—Not at that time.

(By Mr. Justice Abbott.) The prisoner, Donnall, was in the room at that time?—Yes, my Lord.

(By Mr. Sergt. Lens.) What did you proceed to do

then?—We proceeded to examine the intestines, and found them also inflamed in different parts, particularly that part which was next the stomach, and some others that were lower down.

Could a patient be sensible of the existence of such an inflammation, or might it remain for any time, and the patient be perfectly well?—That is impossible; a patient could not be well with such an inflammation existing.

Could you judge at all of the length of time in which, in the common course of nature, such an inflammation could be produced by any natural cause? could it be produced by any natural cause?—Not in the time.

Such an inflammation could be produced by a natural cause, but not within the time?—Not within the time.

What sort of substances will produce that sort of inflammation in so short a time, not being natural causes?—Any active poison.

Could it be produced by any thing short of an active poison in any time, or within so short a time?—I think not.

Did you proceed then to see whether there was any thing to be discovered of an active nature?—I then turned to the contents of the stomach which I had placed in a jug.

(By Mr. Justice Abbott.) Then your back had been to the jug?—It was behind, or rather on my left side.

(By Mr. Sergt. Lens.) When you had turned round, did you find it in the same situation?—Yes, I found it in the same situation, but I was surprised to see it empty.

Did you express that surprise to any body?—I expressed it to Mr. Donnall, and asked him what had become of it, and he told me he had thrown it into the chamber utensil; I observed to him that he ought not to have done so, as I had before said that it must be carefully preserved; and I observed to him also, that it would give me a great deal more trouble, as I must evaporate a larger quantity of water than I should otherwise have had to do, to get at the object of my search.

Can you tell us what the quantity was in the basin, and

what the quantity was afterwards?—It was a little more than half a pint originally.

And what was the quantity when mixed with the other water?—Nearly two quarts. The chamber vessel was clean when I came into the room.

What had occasioned any used water in it?—I threw some of the water into it, in which we had washed some part of the intestines.

What was then done with it?—As soon as we had finished the examination, I left it to Mr. Street's charge, who told me he would take care of the contents of the stomach.

You did not see them again till they were at your own house?—No, not till they were brought there in two bottles. I recollect putting this chamber utensil further under the bed, in order that it might not be disturbed, and desired that no one should touch it or go into the room, during our absence, Mr. Donnall still remaining. Mr. Donnall had been out of the room once or twice.

But was he there when that direction was given?—— Yes, Sir.

Did you afterwards, and when, proceed to examine the contents of the two bottles?—It was two days before I had finished that examination.

How soon afterwards did you see it in the two bottles in your house?—On the same day that we examined the body.

Did you upon examination trace any thing of the sort that you looked for?—I examined it in different ways by chemical tests, and they all shewed the presence of arsenic; if necessary I will state the method I followed.

In consequence of the experiment, you detected it to be arsenic?—Arsenic in solution but not in substance.

How did you detect it?—I tried it by chemical re-agents that would produce a certain colour when arsenic was present.

In general, upon that part of the subject, what is your opinion of the cause of the death of this lady, from your

observation on what you took away and examined afterwards?—From the appearance of the stomach and the examination of its contents, I have not the least doubt that it was produced by poison.

Independently of that appearance to be arsenic, what is your opinion of the general appearance, so as to judge of the cause of the death?—I have no doubt that the death was produced by the effects of arsenic.

Could you have formed any judgment independently of the analysis, or is this latter part necessary to your judgment?—I should have believed, from the examination of the stomach and intestines only, that the death had been produced by some corrosive substance.

Should you have been of opinion, without any analysis, but from the general appearance of the stomach, that she had died of poison?—I should certainly have been of that opinion.

But not arsenic in particular?—No; but some corrosive substance.

Could that corrosive substance have been produced in the body itself, or must it have been administered from without?—It is not possible that it should have been produced internally; it must have been introduced from without.

(Cross-examined by Mr. Sergt. Peil.)

I think you said, that you found this lady's pulse frequent and fluttering?—Yes, Sir.

The medicine you prescribed for her was of a purgative nature?—Yes.

How often would she have had to take that medicine, between the time you gave that prescription and the time when she died?—I gave her the prescription for every four hours, but I left instructions to give it every three hours.

Is that the prescription? *(shewing it)*—Yes, Sir.

Be so good as to mention what are the materials—or first, what is the nature of that complaint, called Cholera Morbus?—It is generally produced in hot seasons, by bile

getting into the stomach, and causing irritation in the stomach and bowels.

Is not cramp sometimes a symptom of a violent bilious attack?—Cramp often comes on in violent irritations of the stomach and bowels, whatever may be the cause of that irritation.

Is not cramp a certain symptom of a violent bilious attack?—It very often accompanies it.

(By Mr. Justice Abbott.) Cramp of the legs generally arises from those causes?—Yes, my Lord; most frequently from a violent action of the stomach.

(By Mr. Sergt. Pell.) Might it not arise from a bilious disorganization of the stomach?—Yes.

This complaint of Chelera Morbus may proceed to a very painful degree?—It may kill.

Is it a very painful complaint?—It is a very distressing complaint.

As far as you have had an opportunity of visiting patients, do you know it to be a painful complaint?—It produces cramp, which is painful, and it certainly produces pain in the stomach and bowels by its violent action.

Do you apprehend that a purgative medicine would be a proper medicine for a person in that situation, supposing it to have been Cholera Morbus?—There were no symptoms of Cholera Morbus when I saw Mrs. Downing; but from what I heard of her complaint, I imagined that there was something offensive either in the stomach or bowels, which ought to be evacuated.

Were ten drops of laudanum a proper thing to give her?—It is sometimes given to allay the irritation of those parts.

Might not a powerful administration of laudanum be of use in Cholera Morbus?—Seldom, I think, in large quantities, but is given in small doses frequently, if the case be urgent.

I think you have stated, that the result of your chemical experiment was not the production of any gross arsenic, or arsenic in substance?—Not arsenic in substance.

And you judged from the application of chemical tests?—Yes, Sir.

Be so good as to state what the chemical tests were which you used?—The first was with the sulphate of copper, which is the common blue vitriol. If you put a little carbonate of potash into water containing a solution of arsenic, and then add the sulphate of copper in solution, a *green* precipitate will be produced; whereas, if no arsenic be present, a *blue* precipitate would be formed: that was the first test which I used.

What was the second test?—The second test was with the nitrate of silver, or common lunar caustic, (these are the same in substance, but the lunar caustic is the more common term). Put a little carbonate of potash into water containing arsenic in solution, and dip the end of a cylindrical piece of lunar caustic into the water, a *yellow* precipitate will be produced; whereas if no arsenic be present, a *white* precipitate would be formed. Those were the chief tests which I used; but in order to ascertain whether any thing which had been taken into the stomach, or was naturally contained in it, would alter the appearances produced by the tests, so as to make the result uncertain, I tried other experiments. I concluded that bile formed part of the contents of the stomach; I therefore procured some and mixed it with water, and subjected it to the same tests in the same manner, and I found that the appearance of the precipitate was not the same as if arsenic were present; I therefore inferred that bile, in the quantity in which it may occasionally be found in the stomach, would not alter the conclusion I had drawn from the result of my first experiments.—I was informed that Mrs. Downing had eaten onions; I boiled some in water in the usual way, and after pouring off the water in which they were boiled, I poured some boiling water on them, and let them stand for some hours; I then ascertained what effect this water would produce on the tests, and was satisfied that it would not, when the experiment was carefully made, produce the ap-

pearance of arsenic.—I also understood that some tartarized antimony had been given; I tried the tests with a solution of that substance, and the precipitate had not the appearance which arsenic, if present, would put on.

Do you happen to know who was the first person who discovered these tests?—I believe Mr. Hume discovered that with nitrate of silver.

Do you know Dr. Marcett?—Yes, I know him from his writings, to be a clever man.

You don't happen to know whether he first discovered this mode?—No.

Do you know of any mode of managing any fluid substance, in which arsenic has been mixed, so as to produce arsenic in substance?—By evaporating the solution containing arsenic, and by exposing it to heat in a close vessel, you will produce it in a white solid state; and by mixing the residuum of a solution of arsenic with an inflammable substance, arsenic will be sublimed in its metallic state by the same process.

The result of that experiment would not have deceived any one in the world?—It would not certainly; but there was such a small quantity left, after my other experiments, that it was not tried.

It would have produced it, so that any person would know the thing to be arsenic?—Certainly.

You mix the fluid, in which the arsenic is, with an alkali, when you seek to re-produce the mineral in substance? you mix the solution with an alkali, don't you?—No; there is no occasion for an alkali.

You put it in solution and expose it to heat?—If the arsenic be in solution, it must be evaporated; and by doing that which I have before stated with the residuum, it will be produced in its metallic state.

With respect to the other tests, do you consider those as conclusive and infallible?—Yes, in the way I used them.

This business, of course, must have made a great bustle in Falmouth, when people first talked about it?—Yes, Sir.

When were you examined before the Coroner?—Upon the same day of the funeral, and on the Thursday preceding. I begged the inquest might be put off for two days, till I had examined the contents of the stomach; and it was put off for two days.

You were examined, I believe, before you made the analyses?—I remember that I was examined on the Thursday as to the appearances I found on the stomach.

Can you recollect whether you did or did not state, before the Gentlemen of the Jury, that the appearances of the stomach were such as proceeded from a natural cause?—No, certainly not.

You did however desire that it might be postponed two days, that you might make some experiments on the contents of the stomach?—Yes, Sir.

Are persons, particularly women, of an elderly time of life, more subject to the attack of Cholera Morbus, than people who are young?—There is very little difference.

The age of the person does not predispose him or her more to that complaint, than a youthful person?—No, I don't think it does; it is rather the contrary.

You say there was nothing in the chamber vessel but water that had been poured in, with which you had washed some parts of the stomach?—I poured the water in myself, at a time when I believe it was empty.

Mr. Sergt. Pell—So that the effect of it would be only to give more trouble in evaporating a greater quantity of fluid, it having been made before.

(Re-examined by Mr. Sergt. Lens.)

You have been asked several questions about the nature of Cholera Morbus; do you change your opinion, in any respect, as to this not being Cholera Morbus that occasioned the death?—I do not.

You have been asked particularly about a third test that you did not make use of; I wish to ask you how it happened that you did not resort to that test as well as to the others?

—There was not sufficient left so as to ascertain it accurately.

So that that last test would not be so proper as the others?—The tests I used would detect a more minute portion of arsenic, and therefore were more proper for that occasion, as I found that there could not be much arsenic in the fluid, from the appearances produced by these tests.

And that was the reason that you resorted to those tests instead of this last test, which you did not use?—Yes, that was the reason, when I found by the other tests that the arsenic was not in a large quantity.

Had the quantity been larger, how would you have proceeded?—I should have resorted also to the last if there had been a larger quantity.

(By Mr. Justice Abbott.) The portion detected was very small?—Yes, my Lord.

Do I understand you to say that it was so small that you did not think it fit to try the other test, or that of evaporation?—That was my reason. I accounted for the smallness of the quantity of poison in this way—from the frequent throwing up, and the purging, which would carry off large portions.

Suppose the contents of the stomach had been suffered to remain in the jug as you had put them, unmixed with any quantity of fluid, would it have been more easy to perform the experiment, and securing its effect?—There would be the same result, but a difference in regard to the length of time that it would take to evaporate.

After having tried and made use of these tests, would it have been practicable still to have tried the test by evaporation and sublimation?—I did not do it as the quantity of fluid was so small, and I did not conceive that a small quantity would do. If I had evaporated the whole of it in the first place, I might perhaps have detected arsenic in substance; but I had made use of a great quantity in trying the other tests, which I threw away.

That would not have been proper to have tried again, that

which had been tried before?—It would not have been so easily done.

The application of the lunar caustic in the one instance, and the sulphate of copper in the other, would not have prevented the other operation?—It would not have been so correct.

Do you happen to know that the prisoner, Mr. Donnall, ever desired that any other test should be applied?—I don't recollect that he did; but some one came to my house, and requested me to give him a part of the contents of the stomach to try it, but I had none.

If any application was made, it was too late?—Yes, my Lord.

Was any person with you when you tried these tests?—Mr. Street, a brother of the gentleman I have spoken of, was with me.

That is Mr. Samuel Spyvee Street?—Yes, my Lord.

Any other person, at the other time of the experiments?—Mr. John Street was present at the other.

(Witness withdrew.)

Mr. John Street (examined by Mr. Gazelee).

You were a surgeon?—Yes, Sir.

How long have you been retired from that profession?—About five years.

Was any application made to you to attend the opening of the body of Mrs. Downing?—Yes, Sir, there was.

Who applied to you?—Mr. Donnall.

Upon what day did he apply to you?——Upon the Thursday.

To assist him in opening the body?—Yes, Sir.

What time did you go to the house?—Mr. Donnall called upon me about half-past one o'clock upon the Thursday, and I went to the house about two o'clock, or half-past two.

Whom did you find there?——Mr. Donnall and Dr. Edwards.

The operation was performed by Dr. Edwards?—Yes, and I assisted him.

Do you remember the circumstance of the contents of the stomach being taken out and put into a jug?—Yes, I do.

What became of the jug, or was any thing said about it?—Dr. Edwards poured the contents of the stomach into a jug, and requested it should be taken particular care of, addressing himself particularly to Mr. Donnall, who was very near him.

After that, did you proceed to examine the stomach itself?—We did.

Describe the appearances upon the stomach?—After opening the stomach, I perceived it to be very much inflamed, and remarked it to Dr. Edwards, and also to Mr. Donnall, who was upon my right hand, that the inflammation was very extensive, and the blood-vessels very turgid; there were stars, and the villous coat very highly inflamed; that was the appearance of the stomach; we then examined the Duodenum, we found that very much inflamed; the Jejunium and Illium we found but slightly inflamed; the Cæcum was the next part that we opened, that was inflamed but slightly.

(By Mr. Justice Abbott.) Those are the parts of the body connected with the stomach?—Yes; after that we opened the chest to examine the heart, liver, and lungs, and we found them in a perfect state.

(By Mr. Gazelee.) From those appearances, could you form any judgment as to what was the occasion of the death of the deceased?—From the appearances I should attribute the death to some corrosive matter taken into the stomach.

You found that the contents of the jug had been removed into a chamber utensil, did you not?—Yes.

That chamber vessel was afterwards removed further in under the bed?—Yes, Sir, by Dr. Edwards.

Did you and Dr. Edwards go out of the room together?—We did, and Dr. Edwards remarked that he wished nobody to go into the room when we were out of the way; he said

this to Mr. Donnall, " You'll observe that nobody is to go into the room while we are away.

(By Mr. Justice Abbott.) Did you leave the prisoner in the room!—No, my Lord; we all went down together.

(By Mr. Gazelee.) Dr. Edwards and you went over to the town-hall together?—Yes, Sir.

How long did you remain there, till you returned?—About three or four minutes.

Did the Jury come back with you?—Yes, Sir.

Did you again go to the Town-hall?—Yes.

How long might you be absent the second time?—About ten minutes.

At the expiration of those ten minutes, did you return to the room for any, and what purpose?—I returned to the room to do what was necessary to Mrs. Downing, and to put her into the shell.

Did you do any thing then?—I did; after putting Mrs. Downing into the coffin, I told the servant to get me some bottles, which she procured, and I then poured the contents of the chamber utensil into a jug, and then into two bottles; they filled both bottles; they were two quart bottles.

Did you find any person in the room when you came back?—No person.

What became of the bottles?—I told the servant to deliver them to Dr. Edwards.

What is her name?—Susan Weeks.

Mr. Gazelee—Her name is now O'Brien, having been since married.

Did you see her go with them?—I saw her within a hundred yards of Dr. Edwards's house with the bottles.

Were you present when any of the tests spoken of by Dr. Edwards were tried by that gentleman?—Yes, I saw him try some of them.

(By Mr. Justice Abbott.) Which of them did you see?—I am not chemist enough to say; but I saw him try some, and he told me before what would be the effect.

(Cross-examined by Mr. Gifford.)

When you poured the contents of the chamber vessel into a jug, did you find the chamber vessel in the same state as when you left?—I think it was.

(Witness withdrew.)

Dr. Edwards re-called, (re-examined by Mr. Justice Abbott.)

I wish to ask you this question, whether arsenic may be administered in a fluid state?—Yes, my Lord, it may.

The usual way is in grains or in powder, but it may be administered in a fluid state?—Yes, my Lord; it may be dissolved in water and administered.

May such a solution be made very strong?—If it be dissolved in hot water it will contain a large portion; but if in cold water it will not hold more than in the proportion of one-eightieth part of the water.

When you obtain a solution of arsenic, what quantity will be contained in the hot water, or what quantity of that water would be sufficient to occasion death?—I cannot say exactly.

Two or three tea-spoonsful?—Very little more than that, I should suppose.

Two dessert-spoonsful?—I dare say it would.

A table-spoonful?—Yes, my Lord. If an alkali be dissolved in the water first, it will hold a larger proportion in solution; but if dissolved in the common way, I should think a table-spoonful would be sufficient to produce death.

(Witness withdrew.)

Dr. Edwards again re-called, (re-examined by Mr. Justice Abbott.)

Did the body of the deceased swell at all before it was opened?—No, my Lord, it did not.

Was there any discharge from the nostrils, or any symptoms of putrefaction?—None at that time; and as to the discharge from the nostrils, I did not observe any.

In your judgment, could there be any thing in the appearance of the body which could lead a medical man to say that it was necessary to procure a shell immediately?—I should think not.

In case of death by Cholera Morbus, does putrefaction take place early?—I never observed it.

Mr. Justice Abbott.—Then you don't know it, either one way or other, to say how that is.

(Witness withdrew.)

EVIDENCE FOR THE DEFENCE.

Dr. Adam Neale (examined by Mr. Sergt. Pell).

I believe you are a physician at Exeter?—Yes, Sir.

Have you, in the course of your medical experience, been called upon to attend cases of Cholera Morbus?—Yes, frequently.

From what cause, in general, does Cholera Morbus arise?—It generally arises from putrid bile collected in the intestines, which is thrown off by vomiting, and diarrhœa, or purging.

Is it a disorder which is in its nature fatal?—It is the most acute disease known in Great Britain.

What do you mean by the term 'acute?'—I mean by the term acute, a disease which runs its course in the most rapid manner.

What should be the usual course of attack of Cholera Morbus as to duration, supposing the patient ultimately died of it?—It very frequently kills the patient within twenty-four hours, and if neglected or improperly treated, it kills the patient in a much shorter period.

What should you esteem a reasonable symptom of a person of the age of 64 or 65 having this complaint? what should you expect to find in a person with this complaint?—Constant vomiting and purging, attended with pain in the stomach and cramp in the legs.

In that state of the disorder, what should you prescribe?—I should prescribe that the patient drink plentifully of any warm fluid, such as mutton-broth or tea, and then I should give a large dose of opium.

Supposing you were called in to attend a woman with the symptoms you have mentioned, whose pulse was frequent and fluttering, what would you prescribe?—I should then give her a large dose of opium, and I should repeat it at intervals, until the retching, vomiting, and diarrhœa ceased, or till she felt better.

I shall not trouble you, nor my Lord, by going through the particular circumstances which Dr. Edwards has spoken to, but merely ask you, had you the pleasure of hearing his evidence?—I had.

Did you hear distinctly the description he gave of the appearance of the stomach, after it was opened?—I did.

To what cause should you, independently of other circumstances, have attributed those appearances?—To no cause but the disease.

(By Mr. Justice Abbott.) What disease?—To the disease of Cholera Morbus.

Do you mean to say that they are indications of nothing else?—No, my Lord.

They are indications of that disease as well as others?—Yes, my Lord.

(By Mr. Sergt. Pell.) Would Cholera Morbus have that appearance?—I think so.

(By Mr. Justice Abbott.) Did you ever see the body of a person opened, who had died of Cholera Morbus?—I have not, my Lord.

(By Mr. Sergt. Pell.) Have you had, in the course of your practice, occasion to make experiments in chemistry?—Yes, Sir.

Did you hear the first experiment, or test, which Dr. Edwards stated he had made, namely, that by the sulphate of copper?—Yes, Sir.

In your judgment, is that test an infallible test of arsenic being present in solution?—By no means.

Have you heard of the other test which he tried, namely, that by means of the nitrate of silver, or the lunar caustic?—I have.

What is your judgment of that species of test as to arsenic?—That it is equally fallible.

Now as to the test with bile?—No [meaning, that test is not infallible]: from the presence of phosphoric acid, the same yellow-coloured precipitate will be thrown down, if some lunar caustic be put into a solution of phosphate of soda.

What do you esteem to be a complete test of arsenic being held in solution in any complicated body?—I don't conceive that there is any complete test, but the evaporating of the solution, and reproducing the arsenic in its metallic state.

Have you made any experiment upon any mixture, through the medium of nitrate of silver, or the lunar caustic, in which onions have been infused?—Yes, with a decoction of onions.

Be so good as to state particularly what that experiment was which you made?—I made it within the last five days; I made a decoction of onions, and added the carbonate of potash together with the lunar caustic, and a pale yellow cloud was produced; the liquor became opaque, and a cloud, of a colour between white and yellow, or opal, or precious stone colour, was produced.

(By Mr. Justice Abbott.) Through the whole body?—Yes, my Lord; I then varied the experiment and added to it the phosphate of soda.

(By Mr. Sergt. Pell.) After this opaline cloud had been produced, what other effect had it?—It precipitated gradually; there was a precipitation.

(By Mr. Justice Abbott.) This dark shade, or yellowish white cloud, precipitated to the bottom?—Yes, my Lord.

Was that of the nature of what you call precipitation?—Yes, my Lord.

(By Mr. Sergt. Pell.) Well, Sir?—I added some solution of phosphate of soda, and a solution of lunar caustic, and I then obtained a yellow precipitate.

(Cross-examined by Mr. Sergt. Lens.)

I understood you to say that you never did, in point of fact, examine the body of a person that died of Cholera Morbus?—I never did; I only conclude, as a matter of science, that such would be the appearance; but I never did, in point of fact, open the body: I only conclude that that would be the sort of inflammation.

Now, as to this decoction of onions, would one taking rabbits smothered in onions be said to be taking a decoction?—The juice of the onions would be conveyed into the stomach: perhaps it would be as well to explain to the Court what is my motive.

(By Mr. Justice Abbott.) We don't want that; we only want to know whether a decoction be the same as that which would be conveyed by eating boiled onions?—The same fluid would be conveyed into the stomach.

(By Mr. Sergt. Lens.) That is, a decoction of onions?—Yes, Sir.

But the greatest part is drawn off by the preparation?—Some must infallibly remain. The experiment I made was, by cutting an onion into various pieces, and putting it into two wine-glassesful of water, and upon that decoction my experiment proceeded—or by pouring boiling water over it, or boiling it for two minutes, and then I tried the experiment both with the liquid and with the boiled onion, and the effects were the same.

So that the small quantity that remained in the one case, had the same effect as the extract in the other?—Yes, Sir.

That which is used at table must be considerably weaker than that sort of preparation?—A considerable part, but not the whole, otherwise the flavour would be all gone.

(By Mr. Justice Abbott.) In proportion as the strength and flavour is diminished, so is the strength of the juice diminished?—Yes, my Lord.

(By Mr. Sergt. Lens.) Do you mean to say that that mode [the test by evaporation] is absolutely an infallible mode of detecting arsenic?—I speak by the practice of all physicians, both at home and abroad, that it will be positively detected by that mode to be present; but I don't mean to say that Dr. Edwards's experiment won't do it also; but the phosphate of soda will produce the same thing.

Of course, if necessary to inquire as to the fact of its presence, whether it be pursued by one or the other of these modes, you would inquire into collateral circumstances?—Certainly; but if you speak chemically, I should conceive none decisive, without the reproduction of the metal.

In your judgment, this is the best test that can be resorted to?—I don't speak from my own judgment merely, but from acknowledged experiments.

Is there any considerable portion of the phosphate of soda in the bile?—Phosphoric acid exists in all the fluids of the human body, in the blood and other fluids; I cannot say to what degree it may exist, but it certainly does exist in these, and in the bodies of all animals.

Does it exist to such a degree in the human bile, as to produce this effect?—I have not made the experiment.

You have not made any experiment, either in one way or another?—It is necessary that I should mention that a French chemist, named Denard, has published on this subject.

Mr. Justice Abbott.—We cannot take the fact from any publication; we cannot take the fact as related by any stranger.

(By Mr. Sergt. Pell, through Mr. Justice Abbott.) I wish to know whether Dr. Neale, in the course of his practice, has opened many bodies, the stomachs of which were in a state of inflammation?—I have, a great many.

Were those appearances the same as described by Dr. Edwards?—They were; I have seen many instances where they were the same as described by Dr. Edwards.

And that in cases in which there was no reason to suppose that there was poison administered?—No reason whatever, my Lord.

Were you ever present at the opening of the body of a person who was supposed to have died by poison?—I was many years ago, when I was in Scotland, and when I was a young man; but the appearances were not such as to satisfy the medical men that there was arsenic.

Is there any other substance, except this phosphate of soda, that will throw down this yellow precipitate?—Not that I am aware of.

Sulphate of copper was not an infallible test, you say; explain that?—If sulphate of copper be contaminated with iron, or be not pure; if it be mixed with the carbonate of potash in solution, a yellow precipitate would be produced, and the two colours will produce green. I should also state that in mixing the solution, if the sulphate of copper should be added to a decoction or an infusion of onions, with a small quantity of the carbonate of potash, a green precipitate is also produced; I have tried it repeatedly.

Supposing a person to have been eating boiled onions for dinner, and in the course of the night to have been vomiting or purging to a violent degree, would any particular portion of the juice of the onion be left in the stomach?—Not in the stomach in a great proportion; but I think that enough may remain to affect the chemical test.

Notwithstanding the mixture of the onions with other food, there is sufficient to effect that in some degree?—Yes, my Lord.

(By Mr. Sergt. Lens, through Mr. Justice Abbott.) You have stated that you have seen many bodies opened, in which the stomach was in a state of inflammation, and in the state described by Dr. Edwards, and yet no actual poison present in those cases; what has been the state of the villous

coat of the stomach in such cases; have you attended to that?—No, I have not.

Then you have only observed as to the inflammation and so on, but not to the villous coat of the stomach?—Exactly so, my Lord, and not to the villous coat of the stomach.

Witness withdrew.

Dr. Daniel (examined by Mr. Gifford)

You have been for many years a physician at Exeter?—Yes, Sir.

And of considerable practice there?—Yes, Sir.

Have you in your course of practice attended many persons attacked with Cholera Morbus?—I have.

What are the symptoms attendant upon that disorder?—Usually considerable vomiting, affections of the bowels, purging, pains of the stomach, great thirst, and cramps or spasms of the legs.

Where you find a patient violently attacked by those symptoms, what would be the medicines you would administer?—I should undoubtedly direct full doses of opium, to remove the irritation, and to check the discharge.

If you found a patient with a frequent and fluttering pulse, should you so administer?—Most undoubtedly.

Have you heard the symptoms which Mrs. Downing is described to have had the evening before her death?—Yes, Sir.

May I ask you whether those be the symptoms of Cholera Morbus?——They certainly are the symptoms of Cholera Morbus.

(Cross-examined by Mr. Gazelee).

Are these the symptoms of Cholera Morbus exclusively?—No, Sir; they are symptoms of arsenic, or any poison.

(By Mr. Justice Abbott.) Within what period of time does Cholera Morbus usually produce death?—Within my experience, I have seen it nearly fatal within fourteen hours.

Within what time have you known it fatal?—I have never

known it fatal; I have known a patient in imminent danger within fourteen hours, but he recovered.

In what way does that disease usually shew itself? does it begin all at once, when the person is in good health, or gradually?—I have known it rather sudden, after an illness of an hour or two.

Have you ever known an instance of a person in good health, eating a hearty dinner, and then sitting down to tea, taken instantly with vomiting and purging in that way described?—I have seen a case very similar to that.

When you say very similar, will you be good enough to explain that a little more?—It occurred in my practice eight years ago, to see a gentleman who was seized with sickness and nausea about five or six o'clock in the afternoon; the sickness and nausea continued increasing till one or two in the morning, and I was desired to see him; and from two to four o'clock I considered him in such danger that I had no hopes.

That does not apply to my difficulty; I want to know what the state of health of that patient would be—that is, whether he would be troubled with a languor or illness, which a person does not very well understand; or whether that person would be, just before his being so seized with it, in perfect good health?—That gentleman whom I mentioned had been delicate in his health, but had had no positive complaints.

Cholera Morbus proceeds from bile?—From bile and corrupt humours.

Will they collect all at once?—They will shew themselves collectively within a very short period of time.

(By Mr. Gifford.) I believe you knew the prisoner at the bar, when attending the Hospital at Exeter?—Yes, Sir.

Had you an opportunity of seeing him frequently?—Occasionally.

Did you know his character for humanity and tenderness?—He always appeared to me to have rather an unusual share

of humanity and tenderness; and such was the character which he held in the Institution.

(Witness withdrew.)

Mr. John Tucker (examined by Mr. Sergt. Pell.)

You are a surgeon living at Exeter.—I am.

And a member of the Royal College of Surgeons?—Yes, I am.

You have heard the symptoms and circumstances first described by Dr. Edwards and Mr. Street?—Yes.

From the different facts which both those gentlemen have spoken to, as to the state of the stomach of the deceased when opened, what disorder should you have supposed that person to have died of?—From some inflammation in the stomach

What disorder of the human frame, in your judgment, would be likely to produce such appearances?—Hernia, Cholera Morbus, and idiopathic inflammations, or inflammations from unknown causes; that is, when we find those appearances of the stomach where we can assign no causes.

Now supposing a person to have had violent retchings and purgings, accompanied with a pain in the stomach, and accompanied with such appearances as these in the stomach, if the body had been opened to what causes would you attribute it?—To Cholera Morbus, if I had not detected Hernia.

(By Mr. Justice Abbott.) You mean to say that if you had found the stomach in the state described by Dr. Edwards, you would ascribe that to Cholera Morbus?—Yes, my Lord.

(By Mr. Sergt. Pell.) You have heard it stated in evidence what the plan was that Mr. Donnall pursued, when he administered medicine to Mrs. Downing that night?—I have, Sir.

Was that the right or the wrong one?—It was partly right, and partly wrong.

In what respect was it right?—In the exhibition of opium.

In what respect was it wrong?—In giving any thing that would increase the irritation that already existed.

Have you seen the prescription which Dr. Edwards wrote that night?—No, I have not; but I would wish to see it—(*here the prescription alluded to was shewn to the witness*).

Now supposing a person to have retchings and purgings for several hours, and that you found these attended with frequent and fluttering pulse, in that state of the illness what should you have prescribed?—I should have prescribed diametrically opposite to the prescription of Dr. Edwards; I should consider that prescribed by Dr. Edwards as adding weight to a porter's back.

Mr. Justice Abbott *(to the witness)*—Don't speak metaphorically; you are speaking just now of a gentleman of experience and respectability: I don't wish you to conceal your opinion, but only to speak it in different language.

(By Mr. Sergt. Pell.) You should have pursued a method diametrically opposite you say; now what is the course pursued by that prescription?—There was irritation already existing in the bowels, and that prescription, I conceive, would tend to increase that irritation.

Besides tending to increase the irritation, in your judgment what other effect would be produced by it, in that state of the person?—There was considerable debility or exhaustion, and I should think *that* would increase that debility and exhaustion.

What should you have given?—I should have supported the patient, and given opium in large doses.

Have you had an opportunity of examining many bodies after death?—A great many.

I will ask you, did it ever in the course of your practice happen to you to examine a body that had died of Cholera Morbus?—I attended a patient, but I can state the reasons why I did not do so.

Don't state the reasons why you did not. Then you never did open any body that had died of Cholera Morbus? —Never.

You have opened bodies after death?—Yes, Sir, a great many.

In cases of mere accident, where death has been produced by violent injury arising from accident, have you ever had occasion to ascertain the state of such a body as that?—I have.

How long ago?—Eight or nine years ago.

What was the accident that occasioned the death?—A fractured skull.

How long after the death was the body opened?—It was either upon the second or the third day.

What was the state of the stomach of that person?—Highly vascular, which would lead any one unaccustomed to the complaint, to mistake it as arising from inflammation.

Now explain what you mean by the terms 'highly vascular?'—The congestion of numerous blood-vessels.

Is there any thing as to the state of the hardness or softness of the coats of the stomach, upon which any judgment can rest?—I should suspect that as it is inflamed, the coats of the stomach would be thickened and soft; for as the inflammation takes place, the parts increase in size.

Have you examined the bodies of soldiers, or of any description of persons, who have died of that complaint?—Yes, I have.

What would be the state, with respect to inflammatory appearances in the stomach, of those subjects?—We generally find the coats of the stomach red and thick; we very often, but not always, find it where there is no reason whatever to suspect inflammation.

Have you applied yourself to the study of chemistry very much?—Not very much; but I have attended chemical lectures.

Do you happen to know whether the chemical test through the medium of nitrate of silver, or lunar caustic, is an in-

fallible one or not, as to shewing the presence of arsenic in solution?—I conceive it not to be so.

Do you recollect who it was that first proved this test?—I don't know who it was that proved it first; but the first time I ever saw it described was in a medical publication by Dr. Marcet, lecturer in Guy's Hospital.

Do you happen to know whether there be any thing else, besides arsenic, which, if submitted to the lunar caustic, would produce the same result as it would with arsenic?—I do.

What else?—If there be any alkaline phosphate, it would put on the same appearance, and throw down the same yellow precipitate.

Do you know whether phosphoric acid and salts be contained, or abound in the human frame?—I have been led to believe so.

Did you hear Dr. Edwards give his evidence as to the test also of the sulphate of copper?—I did.

Have you made any experiments as to the sulphate of copper?—I have.

We have been told that the sulphate of copper, when added to any liquid or fluid containing arsenic, will throw down a green precipitate?—Yes, it will have that effect; and I have made that experiment.

Have you made any experiment in order to ascertain whether any green precipitate would be thrown down by sulphate of copper, when applied to any other solution than that of arsenic?—I have tried it with an infusion of onions and animal matter.

(By Mr. Justice Abbott.) What was the result?—A green precipitate resembling that which would have been thrown down, if arsenic had been present.

(Cross-examined by Mr. Sergt. Lens.)

Did you happen to attend when Dr. Edwards was the chemical lecturer at St. Bartholomew's Hospital, in London?

—I was a student in the Borough, at St. Thomas's and Guy's.

Then you did not attend yourself, when Dr. Edwards was the chemical lecturer at St. Bartholomew's ?—No, I did not.

Do we understand that you made those experiments previous, or since this circumstance happened ?—Both previous to, and since this melancholy circumstance; and particularly that with the nitrate of silver; and I thought it one of the most delicate at the time I made it.

(By Mr. Justice Abbott.) That is the lunar caustic ?—Yes, my Lord. When I first made the experiment, about three years ago, I found it the most delicate test of arsenic.

What do you mean by the most delicate test of arsenic? —That is, the smallest portion would be detected by it.

(By Mr. Sergt. Lens.) You found that at first ?—Yes, but I have since discovered its fallacy; and it was pointed out by the same means which discovered its delicacy as a test, because it is now ascertained that something else will produce the same appearances.

You have mentioned what ?—Yes, any alkaline phosphates.

(Witness withdrew.)

Mr. Joseph Collier Cookworthy (examined by Mr. Gifford.)

I believe you are a physician at Plymouth ?—I am.

You have been present during the course of this trial, and have heard the examination of Dr. Edwards ?—I have.

You have accordingly heard the tests that he applied to the contents of the stomach of Mrs. Downing ?—I have, Sir.

Now I would ask you whether, in your judgment and experience, those tests be or be not conclusive ?—I am satisfied that they are not.

When I ask you whether or not they be conclusive, I mean as to the existence of arsenic ?—I am certain they are not, and that they do not unequivocally shew the existence of arsenic.

Do the same results follow from experiments from other compounds?—They do.

What, in your judgment, is the proper test by which the presence of arsenic would be discovered?—I am borne out by all philosophical chemists in this country, in stating that the only test that can bear a man out in swearing to its presence is, the reproduction of the metal; I mean the arsenic in its metallic state.

In the other tests is the colour of the precipitate the only thing by which to judge that arsenic is present?—In what tests?

The sulphate of copper for instance?—Unless it were mixed with some carbonaceous matter, and submitted to the action of heat: where that has not been done, it is the colour only that has been relied on.

Have you heard the appearances of the stomach as described by Dr. Edwards?—I have.

Do those appearances, in your judgment, indicate the presence of arsenic in the stomach?—Although I should not have drawn the conclusion that that body had therein received poison, I certainly should have allowed such a reflection to enter into my mind, and have acted upon it; yet I by no means think (and I speak from the experience of others), that the appearances stated to have existed were such as *only* to denote the presence of arsenic.

Have you known the prisoner at the bar long?—Yes, Sir.

How long?—I only knew him at school; we were educated together at the Exeter Free Grammar-school.

At that time, what was his character for humanity?—It would be difficult to say what attaches one school-boy to another; but I can say conscientiously——

That is not the question. What was his character as a school-boy?—That is a question which is difficult to answer—not that I mean to imply that there was any thing to the contrary of a good character, for I mean to say that he stood high—he was respected by his school-fellows. We slept

together in the same dormitary; and I remember now with pleasure, notwithstanding the time that has transpired, the intimacy that then existed.

(Cross-examined by Mr. Gazelee.)

You said that nothing but the reproduction of the arsenic would satisfy your mind as to the presence of it?—It would not; and I am borne out in that belief by the best authorities in the country; nothing short of that would satisfy my mind in swearing to its presence.

(By Mr. Justice Abbott.) You said that the same results would follow from other compounds?—Yes, my Lord.

What other compounds would give the same result with the lunar caustic?—Phosphoric acid.

And what with the sulphate of copper?—Understanding that the deceased had died after eating a hearty dinner of rabbits and onions, I cut a large onion into slices, and took a slice of raw meat, and put them into the same vessel, and poured rather more than a pint of warm water upon the mixture, with the view of making an infusion; I allowed it to infuse for some hours; I then took a quantity of the liquid or infusion so prepared, and I applied to it the same tests:—first, the sub-carbonate of potash in solution, I then added the sulphate of copper in solution, the two tests which I understood Dr. Edwards had used.

And what was the effect produced?—A green precipitate was instantly formed.

Was that experiment then complete?—It was, my Lord.

Any thing else?—Yes, my Lord; with another portion of the liquor I tried this other experiment;—I put in some sub-carbonate of potash in solution, I then added the sub-nitrate of silver, or lunar caustic, and a yellow precipitate was produced.

Is there any thing farther you would wish to say as to those experiments?—Yes, my Lord; I used the same tests as I understood Dr. Edwards had used.

(*Witness withdrew.*)

Mr. Samuel Luscombe (examined by Mr. Sergt. Pell.)

You are the Surgeon of the Exeter Hospital?—Yes, Sir.

How long have you been in that situation?—For fifteen or sixteen years.

During the course of that time, you have had an opportunity of examining many bodies?—I have.

Have you heard Dr. Edwards give his evidence to-day?—I have.

From the account which he has given, what would be your judgment as to the cause of that death, it being added that the person who died had violent retchings and purgings?—I should consider that those violent retchings and purgings had exhausted her, and had caused the death.

Putting out of your view those violent affections of the stomach, could you account for the cause of the inflammation?—I could not, unless from discovering some poison in the coats of the stomach at the time.

Have you known, in the course of your practice, many instances of Cholera Morbus?—I have known a great many.

What do you consider to be the immediate cause of Cholera Morbus?—A redundancy of bile and humours upon the stomach.

If inflammation be found upon the stomach after it is opened, what appearance would it put on?—The internal coats of the stomach would be very red in various parts, and the colour very florid; but in the course of two or three days it would become more dark.

That is, it would have a stellated appearance?—I never opened the body of a person who had died of Cholera Morbus.

The Defence of *Eugene Aram*, for the murder of *Daniel Clarke*.

As this trial has excited very extraordinary interest, and presents illustrations of several points connected with Medico-legal investigations, we shall offer to our readers a brief outline of the case, and introduce the ingenious defence which the prisoner composed and read at his trial. In the year 1745, Clarke, a shoemaker, at Knaresborough, in Yorkshire, was induced by Eugene Aram and Richard Houseman, to purchase a variety of valuable articles of plate and jewellery, in consequence of having married a woman who had many rich relations, and who, by an ostentatious display of this kind, might conclude that Clarke was rich, and in consequence of such belief make him their heir. No sooner had Clarke yielded to the persuasion of these men, and became in consequence possessed of many valuable goods, than Eugene Aram and Houseman murdered him, in February 1745, and buried his body in a field near the town, and having shared Clarke's treasure, they decamped.—Clarke being at the time very much in debt, was supposed to have gone abroad, and every inquiry ceased until the year 1758, when a person, as he was digging for lime-stone near St. Robert's cave, found the bones of a human body, upon which a conjecture arose that they were the remains of Daniel Clarke, who it was presumed might have been murdered; and as Houseman was seen in the company of Clarke a short time before his disappearance, he was immediately apprehended on suspicion, when having lost his self-possession he imprudently exclaimed that *those* were not the bones of Clarke, for they were buried in a different place! and subsequently he stated the exact place where they were deposited, and which were found accordingly. Soon after Houseman was committed to the castle of York, it was discovered that Aram resided in the character of a respectable

school-master at Lynn, in Norfolk, on which he was taken into custody, and conveyed to York castle, where at the following summer assizes they were tried; after Houseman had given his evidence, and all such collateral testimony had been received as could be adduced on such an occasion, Aram delivered the following ingenious defence.

"*My Lord,*

"I know not whether it is of right, or through some indulgence of your Lordship, that I am allowed the liberty at this bar, and at this time to attempt a defence, incapable and uninstructed as I am to speak. Since, while I see so many eyes upon me, so numerous and awful a concourse, fixed with attention, and filled with, I know not what expectations, I labour not with guilt, my Lord, but with perplexity. For having never seen a court but this, being wholly unacquainted with law, the customs of the bar, and all judicial proceedings, I fear I shall be so little capable of speaking with propriety in this place, that it exceeds my hope if I shall be able to speak at all.

"I have heard, my Lord, the indictment read; wherein I find myself charged with the highest crime, with an enormity I am altogether incapable of, a fact, on the commission of which there goes far more insensibility of heart, more profligacy of morals, than ever fell to my lot. And nothing possibly could have admitted a presumption of this nature, but a depravity not inferior to that imputed to me. However, as I stand indicted at your Lordship's bar, and have heard what is called evidence adduced in support of such a charge, I very humbly solicit your Lordship's patience, and beg the hearing of this respectable audience, while I, single and unskilful, destitute of friends, and unassisted by counsel, say something perhaps like argument in my defence. I shall consume but little of your Lordship's time, what I have to say will be short, and this brevity probably will be the best part of it; however, it is offered with all possible regard, and the greatest submission to your Lordship's consideration,

and that of this honourable court. First, my Lord, the whole tenor of my conduct in life contradicts every particular of this indictment. Yet had I never said this, did not my present circumstances extort it from me, and seem to make it necessary. Permit me here, my Lord, to call upon malignity itself, so long and so cruelly busied in this prosecution, to charge upon me any immorality, of which prejudice was not the author. No, my Lord, I concerted no schemes of fraud; projected no violence; injured no man's person or property; my days were honestly laborious; my nights intensely studious. And I humbly conceive my notice of this, especially at this time, will not be thought impertinent or unseasonable, but at least deserving some attention, because, my Lord, that any person, after a temperate use of life, a sense of thinking and acting regularly, and without one single deviation from sobriety, should plunge into the very depth of profligacy, precipitately and at once, is altogether improbable and unprecedented, and absolutely inconsistent with the course of things. Mankind is never corrupted at once, villany is always progressive, and declines from right, step after step, till every regard of probity is lost, and every sense of moral obligation totally perishes.

"Again, my Lord, a suspicion of this kind, which nothing but malevolence could entertain, and ignorance propagate, is violently opposed by my very situation at that time with respect to health; for but a little space before I had been confined to my bed, and suffered under a very long and severe disorder, and was not able for half a year together so much as to walk. The distemper left me indeed, yet slowly and in part, but so macerated, so enfeebled that I was reduced to crutches; and so far from being well about the time I am charged with this fact, that I never to this day perfectly recovered. Could then a person in this condition take any thing into his head so unlikely, so extravagant? I, past the vigour of my age, feeble and valetudinary, with no inducement to engage, no ability to accomplish, no weapon wherewith to perpetrate such a fact, without interest, without power, without motive, without means.

"Besides, it must needs occur to every one, that an action of this atrocious nature is never heard of, but, when its springs are laid open, it appears that it was to support some indolence, or supply some luxury; to satisfy some avarice, or oblige some malice; to prevent some real, or some imaginary want; yet I lay not under the influence of any one of these. Surely, my Lord, I may consistent with both truth and modesty affirm thus much; and none who have any veracity and knew me, will ever question this. In the second place, the disappearance of Clarke is suggested as an argument of his being dead; but the uncertainty of such an inference from that, and the fallibility of all conclusions of such a sort, from such a circumstance, are too obvious and too notorious to require instances; yet superseding many, permit me to procure a very recent one, and that afforded by this castle. In June 1757, William Thompson, for all the vigilance of this place in open daylight and double ironed, made his escape; and notwithstanding an immediate enquiry set on foot, the strictest search and all advertisement, was never heard of since. If then Thompson got off unseen through all these difficulties, how very easy was it for Clarke, when none of them opposed him? But what would be thought of a prosecution commenced against any one seen last with Thompson. Permit me next, my Lord, to observe a little upon the bones which have been discovered. It is said, which perhaps is saying very far, that these are the skeleton of a man. It is possible indeed it may: but is there any certain known criterion, which incontestably distinguishes the sex in human bones? Let it be considered, my Lord, whether the ascertaiuing of this point, ought not to precede any attempt to identify them. The place of their depositum too claims much more attention than is commonly bestowed upon it; for, of all places in the world, none could have mentioned any one, wherein there was greater certainty of finding human bones than a hermitage, except he should point out a church-yard; hermitages, in times past, being not only places of religious retirement, but of

burial too. And it has scarce or never been heard of, but that every cell now known contains or contained the relicts of humanity, some mutilated and some entire. I do not inform, but give me leave to remind your Lordship, that here sat solitary sanctity, and here the hermit or the anchoress, hoped that repose for their bones, when dead, they here enjoyed when living. All the while, my Lord, I am sensible this is known to your Lordship, and many in this court, better than to me. But it seems necessary to my case that others, who have not at all perhaps adverted to things of this nature, and may have concern in my trial, should be made acquainted with it. Suffer me then, my Lord, to produce a few of many evidences, that these cells were used as repositories of the dead, and to enumerate a few in which human bones have been found as it happened in this question; lest to some, that accident might seem extraordinary, and consequently occasion prejudice.

1st. The bones, as was supposed, of the Saxon St. Dubritius were discovered buried in his cell at Guy's Cliff near Warwick, as appears from the authority of Sir. W. Dugdale.

2d. The bones, thought to be those of the anchoress Rosia, were but lately discovered in a cell at Royston, entire, fair, and undecayed, though they must have lain interred for several centuries, as is proved by Dr. Stukely.

3d. But my own country, nay almost this neighbourhood, supplies another instance, for in Jan. 1747 were found by Mr. Stovin, accompanied by a rev. gentleman, the bones, in part, of some recluse, in the cell at Lindholm near Hatfield. They were believed to be those of William of Lindholm, a hermit, who had long made this cave his habitation.

4th. In Feb. 1744 part of Hoburn Abbey being pulled down, a large portion of a corpse appeared, even with the flesh on, which bore cutting with a knife; though it is certain this had lain above 200 years, and how much longer is doubtful, for this Abbey was founded in 1145, and dissolved in 1538 or 9.

"What would have been said, what believed, if this had been an accident to the bones in question? Farther, my Lord, it is not yet out of living memory, that a little distance from Knaresborough in a field, part of the manor of the worthy and patriot baronet, who does that borough the honor to represent it in Parliament, were found in digging for gravel, not one human skeleton only, but five or six, deposited side by side, with each an urn placed at its head, as your Lordship knows was usual in ancient interments. About the same time, in another field, almost close to this borough, was discovered also, in searching for gravel, another human skeleton; but the piety of the same worthy gentleman ordered both pits to be filled up again, commendably, unwilling to disturb the dead. Is the invention of these bones forgotten, then, or industriously concealed, that the discovery of those in question may appear the more singular and extraordinary? whereas, in fact, there is nothing extraordinary in it. My Lord, almost every place conceals such remains. In fields, in hills, in highway sides, in commons, lie frequent and unsuspected bones. And our present allotments for rest for the departed is but of some centuries.

"Another particular seems not to claim a little of your Lordship's notice, and that of the gentlemen of the jury, which is that perhaps no example occurs of more than one skeleton being found in one cell; and in the cell in question was found but one, agreeable in this to the peculiarity of every other known cell in Britain. Not the invention of one skeleton, but of two, would have appeared suspicious and uncommon. But it seems another skeleton has been discovered by some labourer, which was full as confidently asserted to be Clarke's as this. My Lord, must some of the living, if it promotes some interest, be made answerable for all the bones which earth has concealed and chance exposed? and might not a place where bones lay, be mentioned by a person by chance, as well as found by a labourer by chance? or is it more criminal accidentally to name where bones lie, than accidentally to find where they lie? Here too is a hu-

man skull produced, which is fractured; but was this the cause, or was it the consequence of death? was it owing to violence, or was it the effect of natural decay? if it was violence, was that violence before or after death? My Lord, in May 1732 the remains of William Lord Archbishop of this province, were taken up by permission, in this cathedral, and the bones of the skull were broken; yet certainly he died by no violence offered to him alive, that could occasion that fracture there. Let it be considered, my Lord, that upon the dissolution of religious houses, and the commencement of the reformation, the ravages of those times affected both the living and the dead. In search after imaginary treasures, coffins were broken up, graves and vaults dug open, monuments ransacked, and shrines demolished; and it ceased about the beginning of the reign of Queen Elizabeth. I entreat your Lordship, suffer not the violence, the depredations, and the iniquities of those times to be imputed to this. Moreover, what gentleman here is ignorant that Knaresborough had a castle, which though now a ruin, was once considerable both for its strength and garrison? All know it was vigorously besieged by the arms of Parliament, at which siege in sallies, conflicts, flights, pursuits, many fell in the places round it, and where they fell were buried, for every place, my Lord, is burial earth in war; and many questionless of these, rest yet unknown, whose bones futurity shall discover. I hope, with all imaginable submission, that what has been said will not be thought impertinent to this indictment; and that it will be farther from the wisdom, the learning, and the integrity of this place, to impute to the living, what fury in its zeal may have done; what nature may have taken off and piety interred; or what war alone may have destroyed, alone deposited. As to the circumstances that have been raked together I have nothing to observe, but that all circumstances whatever are precarious, and have been but too frequently found lamentably fallible; even the strongest have failed. They may rise to the utmost degree of probability, yet they

are but probability still. Why need I name to your Lordship the two Harrisons recorded by Dr. Howel, who both suffered upon circumstances, because of the sudden disappearance of their lodger, who was in credit, had contracted debts, borrowed money, and went off unseen, and returned a great many years after their execution? Why name the intricate affair of Jaques du Moulin under King Charles 2d, related by a gentleman who was counsel for the crown? and why the unhappy Coleman who suffered innocent, though convicted upon positive evidence, and whose children perished for want, because the world uncharitably believed the father guilty? Why mention the perjury of Smith, incautiously admitted king's evidence, who to screen himself equally accused Faircloth and Loveday of the murder of Dun, the first of whom in 1749 was executed at Winchester, and Loveday was about to suffer at Reading, had not Smith been proved perjured to the satisfaction of the court, by the Surgeon of Gosport hospital. Now, my Lord, having endeavoured to shew that the whole of this process is altogether repugnant to every part of my life, that it is inconsistent with my condition of health about that time, that no rational inference can be drawn, that a person is dead who suddenly disappears, that hermitages were the constant repositories of the bones of the recluse, that the revolutions in religion or the fortune of war, has mangled or buried the dead; the conclusion remains perhaps no less reasonably than impatiently wished for. I at last, after a year's confinement equal to either fortune, put myself upon the candour, the justice, and the humanity of your Lordship, and upon yours, my countrymen, gentlemen of the jury."

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